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# ENVIRONMENTAL ASSESSMENT BOARD

VOLUME: X

DATE: Wednesday, May 25th, 1988

BEFORE:

M.I. JEFFERY, Q.C., Chairman

E. MARTEL, Member

A. KOVEN, Member

FOR HEARING UPDATES CALL (TOLL-FREE): 1-800-387-8810

**FARR &**  
ASSOCIATES  
REPORTING INC.

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HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL  
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR  
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental  
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental  
Assessment for Timber Management on Crown  
Lands in Ontario;

- and -

IN THE MATTER of an Order-in-Council  
(O.C. 2449/87) authorizing the  
Environmental Assessment Board to  
administer a funding program, in  
connection with the environmental  
assessment hearing with respect to the  
Timber Management Class  
Environmental Assessment, and to  
distribute funds to qualified  
participants.

-----  
Hearing held at the Ramada Prince Arthur  
Hotel, 17 North Cumberland St.  
Thunder Bay, Ontario, on Wednesday,  
May 25th, 1988, commencing  
at 9:30 p.m.

-----  
VOLUME X

BEFORE:

MR. MICHAEL I. JEFFERY, Q.C.	Chairman
MR. ELIE MARTEL	Member
MRS. ANNE KOVEN	Member







A P P E A R A N C E S

MR. V. FREIDIN )	MINISTRY OF NATURAL
MS. C. BLASTORAH)	RESOURCES
MS. K. MURPHY )	
MR. B. CAMPBELL)	MINISTRY OF ENVIRONMENT
MS. J. SEABORN )	
MR. R. TUER )	ONTARIO FOREST INDUSTRY
MR. R. COSMAN )	ASSOCIATION and ONTARIO
MS. E. CRONK )	LUMBER MANUFACTURING
MR. P.R. CASSIDY)	ASSOCIATION
MR. J. WILLIAMS	ONTARIO FEDERATION OF
	ANGLERS & HUNTERS
MR. D. HUNTER	NISHNAWBE-ASKI NATION
	and WINDIGO TRIBAL
	COUNCIL
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MS. M. SWENARCHUK)	FORESTS FOR TOMORROW
MR. R. LINDGREN )	
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MR. D. WOOD )	POWER & PAPER COMPANY
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MR. R. COTTON	BOISE CASCADE OF CANADA
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MR. R. BARNES )	ASSOCIATION
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MR. B. McKERCHER)	OUTFITTERS ASSOCIATION
MR. L. GREENSPOON)	NORTHWATCH
MS. B. LLOYD )	







APPEARANCES: (Cont'd)

MR. J. W. ERICKSON)	RED LAKE-EAR FALLS JOINT
MR. B. BABCOCK )	MUNICIPAL COMMITTEE
MR. D. SCOTT )	NORTHWESTERN ONTARIO
MR. J.S. TAYLOR)	ASSOCIATED CHAMBERS OF COMMERCE
MR. J.W. HARBELL)	GREAT LAKES FOREST
MR. S.M. MAKUCH )	PRODUCTS
MR. J. EBBS	ONTARIO PROFESSIONAL FORESTERS ASSOCIATION
MR. D. KING	VENTURE TOURISM ASSOCIATION OF ONTARIO
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MR. M. COATES	ONTARIO FORESTRY ASSOCIATION
MR. P. ODORIZZI	BEARDMORE-LAKE NIPIGON WATCHDOG SOCIETY
MR. R.L. AXFORD	CANADIAN ASSOCIATION OF SINGLE INDUSTRY TOWNS
MR. M.O. EDWARDS	FORT FRANCES CHAMBER OF COMMERCE
MR. P.D. McCUTCHEON	GEORGE NIXON





APPEARANCES: (Cont'd)

MR. C. BRUNETTA

NORTHWESTERN ONTARIO  
TOURISM ASSOCIATION





I N D E X   O F   P R O C E E D I N G S

Witness:

Page No.

<u>RICHARD M. MONZON,</u> <u>LARRY A. DOUGLAS,</u> Resumed	1631
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I N D E X   O F   E X H I B I T S

<u>Exhibit No.</u>	<u>Description</u>	<u>Page No.</u>
33	Final Report Recommendations of Commissioner J.E.J. Fahlgren dated June, 1985.	1699
34	Undated earlier version of Exhibit No. 32.	1703
35	Document entitled A Staff Paper Prepared for the Royal Commission on the Northern Environment by Ian S. Fraser, Director of Research, dated 1985 entitled: Appendix 14.	1733
36	Appendices 3, 4, 5, 6 and 7 to Exhibit No. 33.	1735
37	Photocopy of a letter from the Honourable Alan Pope to Commissioner Fahlgren, dated March 9th, 1980 and attached pages entitled: MNR response to Questions from the RCNE.	1768
38	Copy of excerpts of pages 10-7, 10-8 and 10-9 from Exhibit No. 33.	1776
39	Chapter 2 of Exhibit No. 33.	1784
40	Document entitled: Background Information and Approach to Policy Northwestern Ontario Planning Region, dated September, 1974.	1810
41	Document entitled: Proposed Policy Northwestern Ontario Planning Region, dated September, 1977.	1811





INDEX OF EXHIBITS (Cont'd)

<u>Exhibit No</u>	<u>Description</u>	<u>Page No.</u>
42	Proposed Policy and Optional Plans for the Kenora District Land Use Plan, dated June, 1982.	1824
43	Background Information for the Kenora District Land Use Plan, dated March, 1981.	1825
44	Dryden District Land Use Guidelines dated 1983.	1826
45	Dryden District Land Use Plan, Proposed Policy and Optional Plan dated June, 1982.	1826
46	Background Information, Dryden District Land Use Plan dated April, 1980.	1826
47	Fort Frances District Land Use Guidelines, dated 1983.	1826
48	Fort Frances District Land Use Plan, Proposed Policy and Optional Plans, June, 1982.	1827
49	Background Information, Fort Frances District Land Use Plan dated April, 1980.	1827



1 ---Upon commencing at 9:35 a.m.

2 THE CHAIRMAN: Good morning, ladies and  
3 gentlemen. Please be seated.

4 If we get any more nice days like this,  
5 we will adjourn and go around Thunder Bay for a while.

6 MR. FREIDIN: There hasn't been a day  
7 since we have arrived that the sun hasn't shone.

8 THE CHAIRMAN: Mr. Williams?

9 MR. WILLIAMS: Just a matter of  
10 procedure, before cross-examination this morning, with  
11 regard to transcription service. I would like your  
12 guidance.

13 I think you agree, Mr. Chairman, that the  
14 quality and the accuracy of the service being provided  
15 to us by Farr & Associates is excellent and that, by  
16 and large, we are receiving an accurate transcription  
17 of the evidence being submitted.

18 However, most of us are not perfect and  
19 errors do creep into proceedings.

20 I had talked to the transcribers as to  
21 whether or not there was a method by which there could  
22 be a preliminary draft of the transcript made available  
23 before the final print taking place and maybe pick up  
24 any errors with regard to a clause or word or omission,  
25 as the case may be.



1           I don't know what the practice of the  
2 Board has been in the past. It seems to me, while in  
3 most cases grammatical errors are inconsequential,  
4 anything that has been misused that is substantive in  
5 nature or in the context of submissions made by the  
6 parties, I was wondering, Mr. Chairman, what measures  
7 could be taken to record any evidence of that nature.

8           It has been my intention at the  
9 conclusion of the first three weeks' of the proceedings  
10 to submit a letter to the Board indicating any errors  
11 that I pick up in regard to comments I may have made  
12 and recorded in the transcript.

13           I am wondering if there is a practice  
14 that the Board holds with regard to noting any errors  
15 in the transcript?

16           THE CHAIRMAN: Well, to be frank, that  
17 has not come up very often in terms of it being a  
18 problem.

19           This reporting service is relatively new  
20 to the Board in the sense that we have engaged their  
21 services only over the last eight or nine months; prior  
22 to that we used a different transcription service.

23           One of the reasons we moved to this  
24 service was that they have the facility of putting  
25 everything on disks and the Board, as you may or may

1 not be aware, is in the process of installing a  
2 computerized system which we hope will have some  
3 compatibility with the transcription services as well  
4 to facilitate the Board being able to fully utilize  
5 this service.

6 As far as getting the transcripts prior  
7 to their being published in the final form, I don't  
8 think it has been the practice of the Board to do so.

9 We have in the past, more or less, relied  
10 upon parties who would be interested, particularly  
11 involving their own testimony, to point out any such  
12 errors and, if there were any, then we would probably  
13 have a means of checking it, because I believe that  
14 everything is recorded on tape; is that correct?

15 THE REPORTER: That's right.

16 THE CHAIRMAN: There would be a way to at  
17 least go back to the tapes and see what was said prior  
18 to it being transcribed.

19 I think it is a matter of being a lengthy  
20 and onerous task to have to proofread, in effect, all  
21 of the evidence that goes into a hearing of this type  
22 and, frankly, the Board members would find it difficult  
23 to find that kind of time.

24 MR. WILLIAMS: I am not suggesting it be  
25 the responsibility of the Board. Obviously the onus is

1 on the parties who are testifying or involved in  
2 cross-examination, examination-in-chief, or whatever,  
3 to check their particular comments as transcribed to  
4 see whether...

5 THE CHAIRMAN: I think I can say this:  
6 If some errors were pointed out to us and the errors  
7 appear to be substantive, then we can, I think, go back  
8 to the reporters and ask them to review that with the  
9 tapes and, if there was in fact an error, then to issue  
10 a correction, and they would do that as an addendum to  
11 the next transcript.

12 MR. WILLIAMS: That would probably be the  
13 appropriate procedure to follow. I just don't know  
14 what is the practice or what seemed to be acceptable  
15 for noting errors.

16 I am not talking about making substantive  
17 changes or any use of comment that wasn't there, just  
18 to correct comments there.

19 THE CHAIRMAN: It has not been, to my  
20 knowledge, a major problem in the past. I am not  
21 saying it has never arisen here.

22 MR. WILLIAMS: It may not be a problem  
23 here, but there are situations that exist and I thought  
24 I might draw attention to it.

25 THE CHAIRMAN: If counsel would bring



1 forward any errors in the transcript, we would view the  
2 alleged error with the tape recording and, if they are  
3 in fact substantiated, then we will request them to add  
4 an addendum to the next transcript that they will be  
5 producing at that point in the hearing.

6 MR. WILLIAMS: Thank you, Mr. Chairman.

7 THE CHAIRMAN: You are welcome. Any  
8 other procedural matters at this time.

9 Mr. Colborne?

10 MR. COLBORNE: Thank you, Mr. Chairman.  
11 Yesterday you loaned me a copy of Exhibit 10 which may  
12 be your own or from the panel's table, and I have now  
13 found my own.

14 RICHARD M. MONZON,  
15 LARRY A. DOUGLAS, Resumed

16 CROSS-EXAMINATION BY MR. COLBORNE: (Cont'd)

17 Q. Mr. Monzon, I would like to continue  
18 with questions directed towards you, and the first is:  
19 I would ask you to refer to the Wawa District Land Use  
20 Guidelines which appear as Document No. 8, beginning at  
21 page 90, the evidence outline.

22 I would ask you to turn to page 94,  
23 that's the Table of Contents.

24 MR. MONZON: A. Yes.

25 Q. I believe you quoted from that

1 section which is entitled -- appears there under Part  
2 II of the Policies and Guidelines and the one dealing  
3 with II, Part B of the general policies, and Item 3  
4 under that sub-heading General Policies is Local and  
5 Traditional Users.

6 Now, I put it to you that other land use  
7 guidelines in areas that are within the region are of  
8 interest to my clients and no such category appears,  
9 and the land use guidelines that I am referring to are  
10 those for Dryden, Kenora and Fort Frances.

11 Are you familiar with them?

12 A. Yes, I am familiar with them.

13 Q. I will be producing copies of those a  
14 little bit later, but do you know why that category  
15 will not appear in Dryden or Kenora or Fort Frances  
16 where there are very large Indian populations and would  
17 appear in Wawa where there is, by this document itself,  
18 I think very small populations.

19 A. I can't right off the top of my head.  
20 You would have to give me a moment to consider that.  
21 Can I try and get back to you on that?

22 Q. Yes. I believe you have said that  
23 the Wawa plan was representative and that's why it was  
24 presented as an example of a District Land Use  
25 Guideline; am I correct?

1 A. Yes.

2 THE CHAIRMAN: Excuse me a minute, Mr.  
3 Colborne.

4 Mr. Freidin, where the witnesses are  
5 going to be getting back to Mr. Colborne with some  
6 further information, the Board would not have that  
7 information, necessarily.

8 I am wondering -- in other words, some of  
9 the questions being asked, the Board would be  
10 interested in the answer as well.

11 MR. FREIDIN: I think I have got a list,  
12 I think, of some of the questions and the sorts of  
13 things we have to get back to counsel on. I know some  
14 of the undertakings have been of the nature that they  
15 would advise the Board.

16 I think a question like the one which was  
17 asked there would be a response that could either be  
18 read in or something, if it was the panel.

19 THE CHAIRMAN: After this panel has  
20 stepped down and the answer is given to, say, Mr.  
21 Colborne, would it be your proposal for you, as  
22 counsel, to again respond or file it with the Board?

23 I am just trying to ascertain what kind  
24 of procedure will be impemented so that this Board will  
25 get this information as well.



1 MR. FREIDIN: That's what I propose to  
2 do. The undertaking about who the witnesses were going  
3 to be for Panel 6, that's the sort of thing I will put  
4 on the record. We have a number of those types of  
5 things with Mr. Castrilli.

6 THE CHAIRMAN: Would you have any  
7 objections if they were handled that way, Mr. Colborne?

8 MR. COLBORNE: No.

9 THE CHAIRMAN: Mr. Freidin will just read  
10 in the answer that the Board should be aware of as  
11 well.

12 MR. COLBORNE: I have no objection to  
13 that.

14 MS. SEABORN: Mr. Chairman, just a point  
15 of clarification.

16 Some of the questions that asked for an  
17 undertaking may be of interest to other people reading  
18 the transcripts, and I would suggest that, in most  
19 cases, undertakings, the answers should be put on the  
20 record through Mr. Freidin whether -- it doesn't matter  
21 whether the panel has stepped down, just so that when  
22 you read the transcript you don't see an outstanding  
23 undertaking and you can be clear that an answer has  
24 been provided.

25 THE CHAIRMAN: I think that is probably

1 something that is of interest to other parties; for  
2 instance, the names of these proposed witnesses for  
3 Panel 6.

4 The Board will be apprised of those names  
5 eventually as they come along, but I would suspect  
6 other parties may want to know as well because that may  
7 influence the conduct of their own case, if they  
8 realize that a person is not going to be called.

9 MR. FREIDIN: Well, I can totally deal  
10 with that one right now, so that that one wouldn't  
11 remain on the record.

12 I would advise Mr. Colborne at the moment  
13 that the witnesses for Panel 6 be Mr. John Kenrick and  
14 Mel Crystal.

15 THE CHAIRMAN: Very well.

16 So, in the future, would you mind, Mr.  
17 Freidin, reading the undertakings to be given by  
18 witnesses that you call into the record, so that we  
19 have it for everyone?

20 I think that would be the better way of  
21 handling it.

22 Sorry, Mr. Colborne.

23 MR. COLBORNE: Q. Mr. Monzon, I believe  
24 you said that this plan was representative or typical,  
25 I am not sure exactly what you said to us.

1                   What criteria were used in selecting this  
2 plan from all of the plans that might be used?

3                   MR. MONZON: A. I think it was just felt  
4 that it was representative of District Land Use  
5 Guidelines that had been prepared across the north that  
6 had provincial parks in them.

7                   Q. What criteria were used to make the  
8 selection?

9                   A. It had provincial parks, it had  
10 national parks, it had national park, it had private  
11 land - both in small amounts and substantial - it had  
12 local municipalities, it had significant area devoted  
13 that was being -- that was under licence to timber  
14 companies, it had remote tourism, it had lodging, it  
15 had cottaging, it had most of the activities that are  
16 dealt with in a land use planning exercise.

17                  Q. So it dealt with a large variety of  
18 types of land?

19                  A. Types of land uses.

20                  Q. And that was the criteria?

21                  A. Yes.

22                  Q. It wasn't because it had the section  
23 on Indian rights that doesn't appear in a number of  
24 others--

25                  A. No.

1 Q. --that you read from?

2 A. No.

3 Q. Each of these land use guidelines -  
4 at least each one that I have looked at - has in  
5 statistical form a report of the public response to the  
6 draft; is that right?

7 A. Yes, that's correct.

8 Q. And the Wawa District Land Use  
9 Guideline, a summary of that type, appears at page 167  
10 of the evidence outline?

11 A. Yes, 166 and 167. Sorry, if you're  
12 looking for the table, yes, the table is on 167.

13 Q. I am looking at the table. Table A1  
14 tells me that there was a total of 88 public responses  
15 of various kinds, at the lower right-hand corner of the  
16 table.

17 A. Yes, that's correct.

18 Q. And that one of those was from a  
19 native organizational group?

20 A. That's correct.

21 Q. And if I look to other District Land  
22 Use Guidelines I would find similar data, it may not be  
23 in exactly the same form, but similar information; is  
24 that correct?

25 A. I believe so, yes.



1 Q. I would like to look now at some  
2 documents, No. 9, 10 and 11 in the evidence outline.  
3 You can begin at page 175 and move from there.

4 I would like to ask you first about a  
5 passage which appears on page 182 of the evidence  
6 outline at the first page of Document No. 10.

7 I would like to read to you the paragraph  
8 in the middle of that page:

9 "It is recognized that a number of  
10 resource management plans, planning  
11 manuals and guidelines are in place. It  
12 is therefore impractical to bring these  
13 existing documents into immediate  
14 conformity with the "Framework" paper.  
15 However, it is expected  
16 that, in the long-term, the intent and  
17 principles as established in this paper  
18 will be incorporated when new  
19 guidelines and manuals are developed or  
20 when existing ones are reviewed and  
21 revised."

22 You were asked about that by other  
23 counsel, and I don't want to repeat the question, but I  
24 want to get it clear.

25 Does this tell the Ministry that anything

1 in Document 10, for instance - and I think 8 and 9 go  
2 along with it - if it is inconsistent with what you  
3 find in the existing District Land Use Guidelines, for  
4 instance, supersedes that guideline or document?

5 Is this a direction which, in effect,  
6 says if there is a conflict the new documents, these  
7 1986 documents, supersede the old ones?

8 A. Well, this is -- this particular  
9 paragraph and this particular piece of evidence was  
10 lead by Mr. Douglas. I mean, but, Mr. Colborne, this  
11 paragraph refers to resource mangement plans as opposed  
12 to a District Land Use Guideline.

13 Q. Resource management plans, planning  
14 manuals and guidelines. So the guidelines referred to  
15 there are not District Land Use Guidelines?

16 A. I think there is a number of  
17 guidelines that are being developed relative to  
18 resource management plans. I think for detail Mr.  
19 Douglas would be the appropriate person to ask on this.

20 Q. I will ask Mr. Douglas that question.  
21 You heard the question?

22 MR. DOUGLAS: A. Yes, sir. The  
23 Framework for Resource Management Planning was directed  
24 at the resource management planning level, as indicated  
25 on the Exhibit 14, the third box down.

1                   That particular paragraph and its  
2           reference to guidelines and manuals, these are the ones  
3           that direct the undertaking of resource management  
4           planning of various types, whether we are talking about  
5           timber management planning, park management planning,  
6           fisheries management planning.

7                   Q.   Yes, those are the three that exist?

8                   A.   Yes.

9                   Q.   And so where we see guidelines here  
10          that's what is being referred to, not District Land Use  
11          Guidelines, but these specific management guidelines?

12                  A.   Not the one that you have in your  
13          hand, which is the tourism one.

14                  Again, I think I better, after the coffee  
15          break, put up my diagram which tries to clarify how we  
16          use these terms. We are creating confusion, I  
17          apologize for that.

18                  Q.   Well, I might get a good chance to  
19          hold on to another one. It says: Timber Management  
20          Guidelines for the protection of fish habitat.

21                  MR. COLBORNE: Mr. Chairman, it is not an  
22          exhibit. I don't have copies of it, other than this  
23          one. I don't think it will be a document that will be  
24          difficult for anybody to find and I don't want to ask  
25          any questions of its contents, so I won't be producing

1 it.

2 Q. I would just ask, Mr. Douglas: Is  
3 this the type of guideline referred to here at line 22?

4 MR. DOUGLAS: A. No, it isn't.

5 THE CHAIRMAN: Try again.

6 MR. MARTEL: Struck out.

7 MR. COLBORNE: Those are the only  
8 guidelines I have got, district land use guidelines and  
9 management guidelines.

10 Q. Mr. Douglas, perhaps you can clarify  
11 that.

12 MR. DOUGLAS: A. I will draw a diagram  
13 at the coffee break and deal with this right after the  
14 coffee break.

15 Q. Yes, thank you.

16 I am now turning to Document No. 11 which  
17 begins at page 186. This is the Framework for Resource  
18 Management Planning in MNR. This is a fairly recently  
19 produced document, and I would ask you to look at page  
20 194, the table.

21 And, again, you were asked about this  
22 table by other counsel so I don't want to repeat the  
23 questions that were asked previously.

24 I have only one question: If you look at  
25 the heading Public Consultation at the top of the table



1 and then look down the table in Operating Level, that  
2 would be the second line up from the bottom, and  
3 immediately to the right where the phrase Operating  
4 Level appears on the left, and off immediately to the  
5 right of that, it says that the operating level targets  
6 contain specific projects and actions.

7 Now, that's my understanding of the  
8 evidence that I have heard, that when your people are  
9 doing practical work, at some time they would  
10 ordinarily have fairly specific and exact - I believe  
11 the phrase that's here - targets, strategies,  
12 priorities as the basis for the application of the job  
13 that they are doing, but then very specific and  
14 concrete is the thing that they are trying to  
15 accomplish.

16 And perhaps that is a kind of roundabout  
17 way of putting it, but is that generally what it says;  
18 that by the time it gets down to operating levels, it  
19 is pretty exact as to what you are trying to  
20 accomplish?

21 A. Yes. What we are talking about there  
22 is specific projects and activities that one could  
23 interpret to occurring on-the-ground; improvement of  
24 fisheries habitat, harvesting in a specific area for  
25 timber, an operating schedule for a dam, that kind of

1 stuff.

2 Q. Now, if you go over to the public  
3 consultation box, the second from the bottom, if I read  
4 that correctly, at that stage your people may simply  
5 have to confer with - the words are: "specific  
6 interest groups", as opposed to broader types of  
7 interest groups?

8 A. That would depend on the type of  
9 decision and which type of plan we are preparing. If  
10 we are talking about timber, for example, the direction  
11 in the Timber Management Planning Manual would oversee  
12 this general kind of direction.

13 If we are talking about something that  
14 wasn't covered by a particular planning manual, this  
15 would give the direction and it would have to be  
16 determined on a case-by-case basis.

17 Q. But assuming there is no direction in  
18 the manual, this gives your operating people at least  
19 the discretion to consult outside the Ministry only  
20 with those who are very directly affected by what they  
21 are doing; is that right?

22 A. That would be the direction in those  
23 cases where that could be isolated, in terms of who had  
24 an interest in the decision.

25 Q. Would you agree with me, Mr.

1 Douglas -- since you voluntarily answered this  
2 question, would you agree with me that for an interest  
3 which is broader to be attended to at that operating  
4 level, it would have to appear somewhere in the more  
5 general direction, whether it is in the manuals or  
6 whether it is in the land use guidelines for the  
7 district, or whether it is even higher up the scale,  
8 the District Strategic Land Use Plan or some direction  
9 from the Minister or something?

10 A. I am not sure that I am following  
11 your question.

12 Q. An interest that's more -- let me use  
13 an example. A treaty, an Indian treaty resource is --

14 A. Yes.

15 Q. If your people at the operating level  
16 are, for instance -- I am trying to think of an example  
17 of something that you do at the operating level. You  
18 mentioned something about waterways?

19 A. Yes, in some cases we operate dams.

20 Q. Okay. I am making a decision about  
21 operation of a dam, perhaps just whether it will be  
22 opened or closed in this particular season.

23 For those operating decisions to be made,  
24 if there isn't some general direction for people making  
25 that decision, they wouldn't automatically or

1 ordinarily consider whether it would have effects on  
2 the land use; would they?

3 A. I think the way we would approach  
4 that is: If we were talking about changing the  
5 operating schedule for a dam, the engineer would  
6 discuss it with our fisheries people to see if it had  
7 an impact on the fishery and if in fact -- if it had  
8 insignificant or no impact, then probably there  
9 wouldn't be complication outside the Ministry.

10 On the other hand, if they were making  
11 some changes which changed the balance, if you wish,  
12 between that waterway working or being operated in the  
13 fisheries interest versus the flood control or flow  
14 application, then they would be expected to go outside.

15 So it would depend on the nature of the  
16 impact. You could have some changes made at that level  
17 which is really viewed as inconsequential.

18 On the other hand, you could have some  
19 that are significant and, if they are significant, then  
20 the people who would be affected by that decision  
21 should be rightly consulted with.

22 Q. But if your local people aren't  
23 alerted to the possible effects, either through some  
24 general policy or direction, or through what they  
25 actually know, then how can they attend to those? They



1 have to be alerted in some way; do they not?

2 A. Well, my view is that our people have  
3 an awareness of the impacts of one program or carrying  
4 out one activity on another, and certainly the whole  
5 purpose of the integrated resource management framework  
6 and the philosophy is to encourage those people to be  
7 very aware and seek --

8 Q. I am sure that you think that your  
9 people are doing the job well. I don't care if you  
10 think that your people are doing their job well.

11 There are people who have the perception  
12 that your people sometimes don't do their job well, but  
13 let's not you and I argue about that.

14 I would just like you to answer the  
15 question, if you can. Would you agree that your  
16 operating people, unless they are alerted one way or  
17 another, through knowledge that they gain on the ground  
18 or through policy direction of some kind of an  
19 interest - they may have that - unless they are  
20 alerted, they can't tend to that, they can't deal with  
21 that?

22 A. They certainly have to have knowledge  
23 that there is a policy or there is a potential impact  
24 before they can take any kind of action to take that  
25 concern or potential impact into account, certainly.

1 Q. In something quite general like an  
2 Indian resource use guideline, how would your operating  
3 people know that?

4 Don't you agree they have to know about  
5 it really from a personal experience or from some  
6 direction that comes down generally?

7 A. Well, I think there is general  
8 direction in the District Land Use Guidelines. The  
9 district manager is responsible for making sure that  
10 things are done from one program point of view, take  
11 into account impacts on other programs and on the  
12 various groups that are out there. And I guess I  
13 coined the phrase stakeholders, so I will call them  
14 stakeholders.

15 Q Oh, you coined the phrase  
16 stakeholders?

17 A. Yes.

18 Q. Well, you are also the one who gives  
19 the directions that whether or not contain jargon?

20 A. Yes.

21 Q. And you don't think stakeholders is  
22 jargon?

23 A. Do you want an explanation why we use  
24 that?

25 Q. No.

1 A. Okay.

2 Q. Somebody else might.

3 THE CHAIRMAN: Well, is there any reason  
4 why we cannot know why you use them?

5 MR. DOUGLAS: No, I would be quite  
6 pleased to tell the Board, if you wish.

7 THE CHAIRMAN: Well, we have had these  
8 terms, Mr. Colborne, bandied around, maybe we should  
9 get an explanation why the Ministry is using that term.

10 MR. COLBORNE: Certainly.

11 THE CHAIRMAN: Go ahead.

12 MR. DOUGLAS: I think there has always  
13 been a concern that the other words that have  
14 traditionally been used are client weight, whether you  
15 use client group, that implies some particular bias in  
16 respect to one group versus the other group.

17 As we got into planning processes that  
18 are broader, reaching more groups, there has been  
19 particular concerns when you use the term client group  
20 in respect to, for example, the timber industry or the  
21 tourism industry or angles and hunters.

22 Another interest out there would call  
23 themselves a -- they are not part of the client group,  
24 so you are not paying us that much attention. So that  
25 was sort of the bias that some people associated with

1 the term client group.

2 We started using the term interest group,  
3 and some people took insult with that term, that they  
4 were simply a logging group and they had no broader  
5 perspective. So that was the concern with the term  
6 interest group.

7 I was at a seminar on integrated resource  
8 management at Banff at which there was a number of  
9 leading people from across Canada, as well as from the  
10 U.S., and there seemed to be a direction to use the  
11 term stakeholder in the sense that it wasn't  
12 particularly biased in the two directions that I've  
13 indicated before, in that a stakeholder was any person  
14 with an interest in an outcome of a resource management  
15 decision.

16 So I guess what we are doing is we are  
17 dealing with the perceptions associated with words and,  
18 because some of the terms that we had traditionally  
19 used were being viewed as implying a certain weight or  
20 bias or some derogatory connotation, we tried to do  
21 it -- pick up another one which is found in the  
22 resource management literature, not in the traditional  
23 municipal planning literature, but it is certainly in  
24 the integrated resource management planning literature,  
25 so we adopted that term.



1 Q. But is it not jargon?

2 A. Well, of course, anything can be  
3 jargon.

4 Q. When I look, at jargon one of the  
5 sub-meanings was a chirping of words.

6 A. Well, if you can give us suggestions  
7 that didn't have any implied bias or adverse  
8 perceptions with it, we would gladly adopt it, if it is  
9 probable.

10 Q. All right. Anyways, let's get back  
11 to where we were. I just want to confirm, you have  
12 said a minute ago that District Land Use Guidelines  
13 would give to your local operating people direction on  
14 things such as native land or resource use rights.  
15 That was one of the sources of direction or  
16 explanation.

17 A. What the guidelines give you is  
18 direction in respect to managing various kinds of  
19 resources such as those which are of interest to the  
20 native people, such as hunting, fishing, trapping, and  
21 wild rice is in some of the District Land Use  
22 Guidelines.

23 So those things are of interest to native  
24 people. There certainly is direction in the District  
25 Land Use Guidelines, you will find more direction when

1       you get down to the resource management planning level.

2                   Q.   More direction with respect to not  
3       being native land or resource use right, but more  
4       direction with respect to the resources you are  
5       managing; is that what you mean?

6                   A.   How you would manage that resource,  
7       what kind of factors you would take into consideration,  
8       what kind of groups you would consult when developing  
9       those documents.

10                   The Timber Management Planning Manual has  
11       a whole section on public involvement and gives a  
12       detailed description of who to consult at the various  
13       stages and I believe that there is a specific -- well,  
14       there is two references, but there is a specific  
15       reference that, and I refer you to page 156 of the  
16       environmental assessment, it says:

17                   "Direct written invitation to local  
18                   regional offices of relevant government  
19                   ministries or agencies, municipalities,  
20                   interest groups, band councils of each  
21                   Indian reserve..."

22                   Q.   That is fine, Mr. Douglas, you are  
23       not answering one of my questions. I am going to be  
24       getting to that.

25                   At page 229 of the evidence, we have the

1 last page of the Framework Document of Document 11, the  
2 second page in the second appendix of that document.

3 You were asked about this, and I won't  
4 repeat those questions. In the first paragraph at the  
5 top of page 229 it states that:

6 "There is a lack of consensus...", and so  
7 on.

8 You told previous counsel that this was  
9 dated from 1984, and reflected the feeling at that  
10 time --

11 THE REPORTER: Excuse me, Mr. Chairman,  
12 I'm having trouble hearing.

13 THE CHAIRMAN: Yes. I am not sure --  
14 that microphone does not sound like it is on.

15 MR. COLBORNE: It wasn't on.

16 THE CHAIRMAN: It is on now.

17 MR. COLBORNE: It is on, according to the  
18 switch.

19 THE CHAIRMAN: Very well. Thanks very  
20 much.

21 MR. COLBORNE: Q. I don't know if you  
22 were asked whether that lack of consensus is still the  
23 case now in 1988 or not. Is it?

24 MR. DOUGLAS: A. I believe that we are  
25 reaching a good quality consensus now, and I think that

1       this discussion that we went through with our field  
2       staff in development of the resource management  
3       planning framework was part of the basis for reaching  
4       that consensus.

5                   Q.   I have one other question concerning  
6       Document No. 11.  But, Mr. Douglas, if I understand the  
7       sketch that you are going to make at the break, I think  
8       that question would relate to what you are going to be  
9       using.

10                   So I will go on to Document No. 15, which  
11       appears first at page 242 of the evidence outline and  
12       continues and concludes on the following page, 243.

13                   THE CHAIRMAN:  Excuse me, Mr. Colborne,  
14       we are still having a little difficulty with the sound  
15       system.

16                   I wonder if you -- can you move the  
17       lecturn a little closer to yourself?

18                   MR. COLBORNE:  Yes.  I can speak up.

19                   THE CHAIRMAN:  Okay, if you would speak  
20       up a little bit, I think that would help.

21                   Thank you.

22                   MR. COLBORNE:  Q.  This document, you  
23       said - and I think it was Mr. Monzon - has been  
24       misunderstood, or was that Mr. Douglas?

25                   MR. DOUGLAS:  A.  I said that.



1                   Q.   Excuse me.  Well, you have been asked  
2                   questions on this, but I can certainly see why it has  
3                   been misunderstood, so I have a couple of questions  
4                   also.

5                   If I understood what you said, you wanted  
6                   to be sure that your people didn't, in effect, prevent  
7                   the harvesting of timber because of some carved in  
8                   stone guideline that didn't really make any sense at a  
9                   particular location.

10                  Is that one way of putting it?

11                  A.   Yes.

12                  Q.   Okay.  Well, everybody who has read  
13                  this and asked you questions read it differently.  
14                  Everybody thought:  Well, here is -- this is not  
15                  something that is intended to increase protection of  
16                  other resource values, this is just something that is  
17                  intended to find a way to make more timber allowable  
18                  for harvest.

19                  The question is:  Why isn't it rephrased?  
20                  Have you not run into that problem of interpretation  
21                  before?

22                  A.   Well, we ran into some of that in the  
23                  Government Review and that is why we are essentially  
24                  going to get rid of this and indicate that the  
25                  direction is the direction that is in the environmental

1 assessment itself, I think it is explained in far more  
2 detail and it is explained in a wider and more accurate  
3 context.

4 Q. Okay. Can you tell me why there did  
5 not appear in this document, the mirror image of the  
6 point that you have tried to make, and the mirror image  
7 would be where the cast in stone guideline said it  
8 should be, for instance, 400 yards but, in reality, it  
9 should be 600 yards to provide the proper protection  
10 for a certain value, but it didn't say that as well?

11 A. Well, that kind of direction, if you  
12 wish, is in the Tourism Planning Guidelines which you  
13 indicated, indicating the importance of dealing with  
14 things on a site-by-site basis.

15 I think this is a historical document and  
16 our thinking has progressed and we have tried to fit  
17 things together in a more coherent way.

18 This document was issued at a time in  
19 which we were trying to have our people do specific  
20 analysis on sites and, in fact, this kind of analysis  
21 is the very kind of thing that Dr. Baskerville said  
22 should be done, you should look at what the impacts  
23 are.

24 Q. Well, just a minute, Mr. Douglas. I  
25 am just asking you why it did not include the mirror

1 image, the direction that let your people take away  
2 from the amount of wood that could be cut, as well as  
3 increase the amount of wood that could be cut.

4 Why does it go only one way?

5 A. Well, it has always been possible for  
6 it to go the other way, that was understood. And you  
7 can point to examples across the province, as I  
8 understand, that you have wider areas; you have, for  
9 example, in Temagami area you have reserves that are  
10 wider than this.

11 Q. Okay. Where does one look to find  
12 authority to your district people to require wider  
13 areas than those set out in the general rules?

14 A. Well, the direction now would be in  
15 the Timber Management Planning Manual and the  
16 environment assessment which allows in the area of  
17 concern process, which will be explained by 15, how you  
18 go about and how you determine what distances should  
19 be.

20 And those distances will take into  
21 account a variety of different concerns, whether they  
22 are fisheries, water quality, tourism, and they are  
23 going to vary from site to site.

24 Some cases those things will have to be  
25 considered in combination, some of them you are really

1       only looking at one of those three factors.

2                   Q.   Okay.  But where does one look to  
3       find the direction to your district staff that they can  
4       do that, that that is within their power?

5                   A.   It is within the Environmental  
6       Assessment Document, the EA.

7                   Q.   But the Environmental Assessment  
8       Document is not a document that is provided to your  
9       district staff on the basis that they should follow it  
10      as Ministry policy?

11                  A.   Yes, it is.

12                  Q.   This is a document that is prepared  
13      for purposes of assessment by the Board before which we  
14      are today; is that not correct?

15                  A.   The Timber Management Planning Manual  
16      is a corporately approved document.

17                  THE CHAIRMAN:  Which forms part of the  
18      environmental assessment?

19                  MR. DOUGLAS:  Yes, it is part of the  
20      environmental assessment, but it was a corporately  
21      approved document.

22                  MR. COLBORNE:  Q.  Is that Exhibit No. 7?

23                  MR. DOUGLAS:  A.  Yes.

24                  Q.   This is one of the exhibits that  
25      hasn't even been referred to yet by any counsel, it was



1 merely filed I think, because we haven't gotten to  
2 anything in this.

3 Now, it is this document that you say  
4 provides your district people with authority to  
5 increase reserves, in effect, as opposed to decrease  
6 them, if they see fit?

7 A. It identifies a planning process in  
8 which an analysis is undertaken, and depending on what  
9 the concern is, the district has the opportunity to  
10 come up with prescriptions which suit the individual  
11 circumstance.

12 Q. Well, that is exactly what I am  
13 asking about. Could you find that in this Exhibit 7  
14 for me?

15 THE CHAIRMAN: Mr. Freidin, while he is  
16 doing that, am I to understand that that Manual,  
17 Exhibit No. 7 - which is really yet to be referred to  
18 formally in the hearing - and which, as I understand  
19 it, forms part of the Class EA, is also a document  
20 setting out a process which is before the Board for  
21 approval as part of the Class EA, regardless of whether  
22 or not it has been corporately approved by MNR in the  
23 past?

24 MR. FREIDIN: The process that the  
25 Ministry is putting forward indicating that the

1 condition of approval falls in that process as  
2 described in the Environmental Assessment Document.

3 Certain portions of it are referred to in  
4 this Timber Mangement Planning Manual, but that Manual  
5 is primarily a document that indicates the format and  
6 the contents of the decision, but in terms of the  
7 content that the Timber Management Planning Manual is  
8 to have in terms of its preparation, process of notice,  
9 public consultation, plan, review and  
10 approval, that sort of thing is outlined in the  
11 Environmental Assessment Document too.

12 THE CHAIRMAN: Well, just to take an  
13 example: Suppose we were to refuse approval to your  
14 application, what effect would that have on that Timber  
15 Management Manual?

16 MR. FREIDIN: If you failed to give an  
17 approval to the undertaking?

18 THE CHAIRMAN: That is right, that is  
19 before us.

20 MR. FREIDIN: The Manual wouldn't be used  
21 I assume because you would, in effect, be saying that  
22 activities of park access, harvest renewal, and  
23 maintenance couldn't occur.

24 THE CHAIRMAN: Okay. Let's perhaps that  
25 is not quite the question I wanted to ask.

1                   If we approved the undertaking with  
2           processes embodying conditions of approval which did  
3           not accord with certain processes set out in the Timber  
4           Management Manual, what effect would that have on the  
5           manual?

6                   MR. FREIDIN: It is our - if I'm  
7           understanding you correctly - if in fact the Board puts  
8           a term or condition which affects the process the  
9           Ministry has undertaken I think in the document, or in  
10          correspondence relating to environment, that the  
11          process as approved would be incorporated into the  
12          Timber Mangement Planning Manual and that the Ministry  
13          of the Environment would have an opportunity to ensure  
14          that that process that was put into the Timber  
15          Management Planning Manual was, in fact, in accordance  
16          with your terms and conditions.

17                  THE CHAIRMAN: So it would be modified  
18          accordingly?

19                  MR. FREIDIN: Yes, in terms of that  
20          process, that's correct.

21                  THE CHAIRMAN: Thank you.

22                  MR. DOUGLAS: Mr. Colborne, there is a  
23          number of sections throughout this document that refers  
24          to areas of concern.

25                  On page 12 there is a paragraph called

1 Identification of Specific Areas of Concern, and these  
2 talk about protecting other values. They don't talk  
3 about specific distances for lakes. And there is -- it  
4 is filtered through, or sprinkled through several  
5 sections of this document.

6 In fact, the best description and a more  
7 complete description is in the Environmental Assessment  
8 Document itself.

9 MR. COLBORNE: Q. Okay. Is the gist of  
10 that that your district people now, under this Manual,  
11 Exhibit 7, have authority to increase reserves or  
12 decrease reserves depending on their view of the  
13 situation that they are confronted with?

14 MR. DOUGLAS: A. And based on the  
15 analysis and general direction that they get from, for  
16 example, the fisheries people.

17 Q. Well, does that mean that some of the  
18 rules that we hear about from time to time, so many  
19 metres from the lake, et cetera, are out the window now  
20 or are they now guidelines or what?

21 A. Well, there is some minimum  
22 requirements based on the consideration of fisheries  
23 and water quality. So there are some minima and some  
24 of those minima have to be met in any situation.

25 In other cases, if you have more



1 information, for example, about the fisheries and the  
2 water quality, these can be revised, but it is a matter  
3 of revising them after an analysis and they are just  
4 minimum requirements.

5 In terms of tourism, there is no specific  
6 numbers in there in terms of minimum or maximum.

7 The ones in terms of fisheries and water  
8 quality are primarily slope-related and dependent on  
9 the type of water body you have, whether it is a cold  
10 water or warm water lake or stream.

11 Q. So there isn't much left in the way  
12 of just simple rules, so many yards from a stream, so  
13 many miles from a this, and so on and so forth, that is  
14 pretty well out the window; is that what you are  
15 saying?

16 A. What I said is that there are certain  
17 minima.

18 Q. Yes.

19 A. And the analysis on the site-specific  
20 basis really has no limits in the sense that they may  
21 well be increased if the situation warrants the need  
22 for them being increased.

23 Q. And even the minima can be revised in  
24 certain circumstances?

25 A. Depending on the level of detail of

1 information you have available. If you only have  
2 general information, you take a conservative approach;  
3 if you have the detailed analysis, then one gets a  
4 little more specific in identifying the directions.

5 Q. Is that part of timber management?

6 A. It is part of the timber management  
7 planning process, yes.

8 Q. And we will be hearing about all  
9 these rules, as far as you know, in terms of the  
10 evidence?

11 A. In terms of the evidence, you will be  
12 provided later on with a very detailed explanation of  
13 the area of concern planning process, you will be given  
14 an explanation of the fisheries guidelines, you will be  
15 given a description of --

16 Q. Well, you don't have to tell me  
17 everything. I have heard several outlines of the  
18 evidence. Your answer is yes?

19 A. Yes.

20 Q. A person who thinks that the reserve  
21 around a lake should have been half a mile and it was  
22 only a quarter of a mile who walks into one of your  
23 district offices, what does he get met with: Well, we  
24 analyzed everything and we have got the answers and  
25 that's it?

1                   I mean, this person who walks in can't  
2 point to anything saying: Hey, I thought you were  
3 supposed to stop cutting within such and such a  
4 distance of this lake.

5                   A. Well, if your hypothetical person  
6 came in and indicated that he thinks that, or she  
7 thinks that cutting should only go to here and gives a  
8 particular reason for that, that reason would be  
9 considered.

10                  Q. No, but what about the situation  
11 where it has already occurred?

12                  A. Well, if it has already occurred, I  
13 am not sure what we could do after the fact.

14                  Q. Yes, but this person may be just  
15 asking for an explanation.

16                  I am suggesting to you that what you have  
17 now described to me is something which would cause your  
18 local people to have a somewhat hard time explaining;  
19 they can't just point to a rule and say: Here, we were  
20 following the rules, sorry, that is the way it works.

21                  They would have to say: Well, we did  
22 this, we did that, and we did the other thing.

23                  Do you see a potential for a  
24 communication problem there?

25                  A. I would hope not.

1 Q. It is highly discretionary, sir, at  
2 least it has that appearance.

3 A. Well, if you get into site-specific  
4 analysis as opposed to rules across the board, one runs  
5 into that potential and --

6 Q. Is this site-specific analysis done  
7 in a manner such that somebody could come in from the  
8 outside and actually look at the written analysis?

9 A. There will be documentation in terms  
10 of the area of concern planning process which will be  
11 part of the documentation in the Timber Management  
12 Plan, so there would be a record of public input, yes,  
13 that would be available.

14 Q. No, that is not my question.

15 Let's take a hypothetical lake, okay.

16 A. Okay.

17 Q. Your local people examine what they  
18 have to examine and decide how close to the lake the  
19 timber can be cut?

20 A. Mm-hmm.

21 Q. It gets cut.

22 A. Mm-hmm.

23 Q. Somebody, for instance, who has a  
24 camp on that lake walks in later and says: Why did you  
25 do it this way, I want an explanation.



1                   Is there going to be a file or a document  
2                   or a form filled out or something saying: We did an  
3                   analysis and here it is, look at it, satisfy yourself.  
4                   We took into account everything we were supposed to be  
5                   taking into account, and that is the way we did.

6                   Is that type of thing going to be  
7                   available.

8                   A. That kind of documentation will be  
9                   available, yes.

10                  Q. Is it available now?

11                  A. It is being developed as part of the  
12                  plans being prepared under this new Manual. So for  
13                  some districts it will be available, for others it  
14                  won't.

15                  We are in a transition period. What the  
16                  Ministry decided in 1985 when they submitted the  
17                  Environmental Assessment Document and we revised the  
18                  Timber Management Planning Manual, we said: We want --  
19                  we think there are some good improvements in this  
20                  process, we are going to implement it immediately.

21                  So the plans that were prepared starting  
22                  in April '86 identified some of these requirements.

23                  Now, these requirements were increased in  
24                  the revisions in the document submitted in June '87, so  
25                  one won't see those until those plans are all prepared.

1 But we are in the process of providing the type of  
2 documentation that you speak of.

3 Q. Thank you.

4 The second page of Document No. 15 at  
5 page 243 of the evidence summary, the first sentence of  
6 the paragraph that appears on that page seems to say to  
7 me that the technical work will be done by the party  
8 responsible and, in Forest Management Agreement areas,  
9 that would be the timber company; right?

10 A. It would have the lead responsibility  
11 for preparing the plan in consultation with Ministry  
12 staff.

13 They would be -- for example, take your  
14 lake example, they would be dealing with our fisheries  
15 people and getting input from our fisheries people and  
16 our outdoor recreation people in particular situations.

17 Q. Okay, so let's take that hypothetical  
18 lake.

19 If they, in preparation of the Forest  
20 Management Agreement for their area, come to you and  
21 say: Don't worry, what we are going to do won't have  
22 any noticeable effect on this lake, is that just  
23 accepted, is it entirely up to them?

24 A. No. We will -- in that review that  
25 comes after that plan is submitted to MNR, we will

1 analyze what they have done to see if they have  
2 followed the proper steps and we would check the public  
3 involvement file which they would be required to give  
4 to us as part of the documentation to see if, in fact,  
5 they took into account those submissions that they have  
6 got from various people, including perhaps your  
7 hypothetical tourist operator on that lake.

8 Q. Okay. I suppose we will be getting  
9 to that in more detail with other witnesses.

10 MR. COLBORNE: Perhaps Mr. Freidin could  
11 answer that.

12 MR. FREIDIN: Yes.

13 MR. COLBORNE: Q. But, in any event, you  
14 people, MNR are going to double check all the work done  
15 by the private operators under the FMAs in preparing  
16 plans?

17 A. It is a responsibility of MNR to  
18 review and approve the plans.

19 Q. I know it is the responsibility.

20 A. Yes.

21 Q. I said, you are going to do it.

22 A. Yes.

23 Q. Okay. What about things like  
24 historical, archaeological sites and so on, that is  
25 handled by a different ministry, right?

1                   A. The provincial responsibility is with  
2 another ministry, yes.

3                   Q. And isn't it true that currently you  
4 have not been able to do your job because there haven't  
5 been enough people and you have simply been entering  
6 into FMAs where historical sites or archaeological  
7 sites are probably being ignored because the people  
8 aren't out there on the ground to do them.

9                   So even though it may be your  
10 responsibility, you just don't do it. Would you accept  
11 that?

12                  A. We are working with the Ministry of  
13 Culture & Communications to develop a process to  
14 address heritage resources in a more detailed and  
15 appropriate way. Perhaps in the past we were somewhat  
16 negligent.

17                  Q. In the past; in the present also,  
18 right?

19                  A. We are in a transition phase.

20                  Q. You are in meetings with that  
21 ministry now because of this environmental assessment;  
22 right?

23                  A. The environmental assessment and also  
24 the fact that the government has placed increased  
25 importance on the protection of heritage resources.



1                   Q. Yes. But in the past, although you  
2 had the responsibility, the people weren't there to do  
3 it, the information did not exist and so, therefore, it  
4 wasn't done.

5                   So there is a difference between having a  
6 responsibility and actually doing it; don't you agree?

7                   A. Obviously, there is. There was --  
8 there is information available in some cases and  
9 certainly that was always taken into account when plans  
10 were prepared.

11                  Q. But if you didn't have the  
12 information, you didn't stop the cutting?

13                  A. If you didn't have any good reason to  
14 stop the cutting, you didn't stop the cutting.

15                  Q. But it was your responsibility to  
16 have the information which you didn't have?

17                  A. The decisions were based on the best  
18 available information and if there was good reasons to  
19 suspect that there was, for example, a historical site  
20 there, the appropriate government people were contacted  
21 and if they identified a concern, we addressed the  
22 concern.

23                  Q. Well, this -- maybe we will have to  
24 go on and on, I didn't think we would, but we are  
25 talking about the Ministry of Culture -- excuse me, I

1 have a cut off photocopy, I cannot read the correct  
2 name of that ministry. I think --

3 THE CHAIRMAN: I think it is Culture &  
4 Recreation.

5 MR. COLBORNE: Q. Culture & Recreation.  
6 We are talking about the Ministry of Culture &  
7 Recreation?

8 MR. DOUGLAS: A. I believe they have  
9 changed the name again, sir. I think it is Culture &  
10 Communications now.

11 Q. Oh, okay. That ministry provided the  
12 expert staff who are qualified to identify these  
13 historical and archaeological sites; is that right?

14 A. Well, that ministry has the expertise  
15 at the provincial level.

16 Q. But who provides the staff that  
17 actually does the work on the ground; is it you, or is  
18 it they, or is it some other ministry?

19 A. That depends on the situation. It  
20 would, in terms of some of the historical material, our  
21 parks people have some knowledge there.

22 In archaeological, pure archaeological  
23 stuff we would have to seek the advice of that other  
24 ministry.

25 Q. Okay. And what I want to get at is,

1 in the past in these circumstances - where I think you  
2 said you might have missed something - what I want to  
3 know is: Whose responsibility was it to not miss  
4 something; was it yours, or are we talking about  
5 another ministry that wasn't or couldn't do its job?

6 A. I think the dividing line is maybe a  
7 little fuzzy there in terms of the Ministry has  
8 responsibility for Crown land and the other ministry  
9 has responsibility for heritage resources.

10 Q. And if you were going to licence a  
11 large tract of land, as you do routinely, what was --  
12 or let's put it this way: What is the process for  
13 making sure that what is going to be done under that  
14 licence - and let's just call it a timber operation -  
15 doesn't cause damage to a historical or archaeological  
16 site; what is the procedure?

17 A. Well, we would go through the normal  
18 steps of developing a timber management plan and that  
19 would be circulated to other government agencies  
20 including Culture & Communications.

21 Q. Is there no organized way of looking  
22 through that territory, to go on the ground in terms of  
23 such as library searching, as to what might be there?

24 A. There are some sources, but it is  
25 uneven across Ontario.

1 MR. COLBORNE: Maybe Mr. Freidin can help  
2 me here. I don't want to ask Mr. Douglas about  
3 something he is not here to give evidence about.

4 Are we going to be hearing from somebody  
5 who is particularly conversant in this question of what  
6 the Ministry of Culture & Communications does in  
7 contrast to what the Ministry of Natural Resources  
8 does?

9 MR. FREIDIN: We weren't intending to  
10 call evidence as to what that ministry does related to  
11 archaeological sites.

12 If in fact there is a finalization of the  
13 discussions which are ongoing now for the purpose of  
14 dealing with the concern about archaeological and  
15 historical sites, then that agreement -- or that  
16 finalization of those discussions will be presented to  
17 the Board.

18 MR. COLBORNE: Very well. I have a few  
19 more questions of Mr. Douglas then.

20 Q. Did I understand you correctly to say  
21 that it was uneven across the province, in some cases  
22 something was done and in some cases that same thing  
23 might not have been done?

24 MR. DOUGLAS: A. I am saying that there  
25 is more detailed work done in some places than others.



1 Like most resources, you tend to have more detailed  
2 information where there is larger populations.

3 Q. By memory, I don't recall anything in  
4 the Class Environmental Assessment Document on that  
5 topic. Can you help me?

6 A. I'd have to go back and check. I  
7 believe that the Environmental Assessment Document  
8 makes some reference - just give me a second - there is  
9 something that might be a little more explicit.

10 THE CHAIRMAN: Gentlemen, I am going to  
11 have to ask you to please speak up, if you can.

12 MR. DOUGLAS: Sorry.

13 THE CHAIRMAN: I do not think your  
14 comments can be picked up by the reporters properly.

15 MR. FREIDIN: Can I assist the witness if  
16 he is looking for a particular section?

17 MR. DOUGLAS: I think I found it. Part  
18 of the documentation that was part of Exhibit 5A?

19 MR. COLBORNE: Q. No, I am asking about  
20 the Class EA Document itself?

21 MR. DOUGLAS: A. I can get back to you.  
22 I can't put my hands on a particular page right now.

23 THE CHAIRMAN: Well, Mr. Colborne, Mr.  
24 Freidin could probably assist the witness in terms of  
25 leading him to the part in the EA.

1 MR. COLBORNE: Oh, certainly.

2 MR. FREIDIN: There is reference to it at  
3 page 113, Mr. Chairman.

4 MR. DOUGLAS: The second paragraph at 113  
5 identifies the need to contact other ministries.

6 It was -- here it was identified as the  
7 Ministry of Citizenship & Culture which is, in fact,  
8 correct when this document was written, it has  
9 subsequently changed.

10 So that is the reference to that kind of  
11 contact. The paragraph says, for example:

12 "Tourism and recreation may provide  
13 information, existing tourist industry  
14 facilities and uses, as well as areas  
15 identified with tourism  
16 potential and the Ministry of Citizenship  
17 & Culture may provide information on  
18 known and potential areas of  
19 archaeological and heritage resources."

20 And, if you wish, Mr. Colborne, I could  
21 identify a more specific reference in Exhibit 5A.

22 MR. COLBORNE: Q. Well, at page 30 of  
23 Exhibit 5A there appears a memorandum dated May 6th,  
24 1988; is that what you had in mind?

25 MR. DOUGLAS: A. No, I am referring to

1 page 14 which identifies those kinds of features and  
2 values that would be taken into account in the area of  
3 concern planning process, and there is a specific  
4 reference on the top of page 15 to archaeological and  
5 historical significance.

6 As well, I believe, the page 30 you are  
7 referring to is my letter to Mr. Montgomery.

8 Q. No, let's just go back to what you  
9 have referred to on pages 14 and 15.

10 That is the new checklist, as it were,  
11 prepared in response to the Review of draft versions of  
12 the Environmental Assessment Document?

13 A. Yes, the original document identified  
14 a rather open-ended definition of areas of concern, the  
15 intent being that it wouldn't restrict looking at  
16 anything.

17 Q. Okay.

18 A. We subsequently got a number of  
19 questions saying: Well, let's at least have some kind  
20 of a minimum checklist, and in that checklist we  
21 identified a number of things that we had always  
22 intended to consider, and sites of archaeological and  
23 historical significance were specifically identified  
24 there.

25 Q. You've previously had checklists,

1       though, this is the first checklist. This is just a  
2       new checklist that was prepared in response to the  
3       review of the draft Class EA; right?

4               A. We never had an explicit checklist  
5       before.

6               Q. Well, you had a checklist in the Land  
7       Use Planning Guidelines of 1974?

8               A. That referred to land use planning.  
9       The checklist here is specific to timber management  
10      planning.

11              Q. Oh. Have you compared the list at  
12      pages 65 and 66 of your evidence outline that is part  
13      of the Guidelines for Land Use Planning and this new  
14      checklist?

15              A. Not specifically.

16              Q. Oh, excuse me, it would be at page  
17      66, the top of page 66.

18              A. Just quickly looking at the list, the  
19      material in that document to the Minister of the  
20      Environment on May 6th is much more detailed than what  
21      you see on page 66.

22              Q. And this is the first time that a  
23      detailed checklist of this type had been produced?

24              A. For the explicit purposes of timber  
25      management planning, yes. I believe some districts had



1 their own internal checklist, but there wasn't a  
2 corporate one.

3 Q. This is now a corporate one?

4 A. Yes.

5 Q. Approved in May, '88?

6 A. That's right.

7 As I indicated before, there was always  
8 concern that if you put out a checklist people would  
9 have the tendency only to look at those things that are  
10 on the checklist, so we hesitated in providing a  
11 checklist.

12 On the other hand, through the Government  
13 Review we were having concerns identified that things  
14 weren't being explicitly considered, so we decided that  
15 given the concern, it would be best to provide a list,  
16 although we do have some concern that it should never  
17 be viewed as a complete list.

18 Q. Okay. So on your new checklist you  
19 do have sites of archaeological or historical  
20 significance, and in the Class EA Document, you say  
21 that the Ministry under its new name may provide  
22 information on that topic?

23 A. What the document says, you take into  
24 account various kinds of information and --

25 Q. No, no, no, I can read what it says.

1 Does it intend to say something different than it says?

2 You have already read to me the passage.

3 A. The passage on which page, please?

4 Q. On page 113 of the Class EA Document.

5 A. Yes, those are sources of information  
6 that will be taken into account.

7 Q. Yes, okay. I am just trying to  
8 summarize where we are at this point in time.  
9 Archaeological, historical sites now are one item on  
10 the new checklist?

11 A. Yes, and if you want to extend that  
12 further --

13 Q. No, I don't want to extend that  
14 further right now, I just want you to --

15 A. There are cemeteries there and I just  
16 don't know --

17 Q. I beg your pardon? Sir, would you  
18 answer my questions.

19 THE CHAIRMAN: Just give him a chance,  
20 Mr. Colborne. Let's have the question and, Mr.  
21 Douglas, listen to the question and answer his question  
22 and then we will move on.

23 MR. DOUGLAS: I was trying to --

24 THE CHAIRMAN: Let's have the question  
25 first. What is the exact question, Mr. Colborne?

1                   MR. COLBORNE: Q. Okay. I am attempting  
2 to summarize where we are now and, that is, that sites  
3 of archaeological and historical significance are now  
4 on the new checklist?

5                   A. Yes.

6                   Q. So your people should take that into  
7 account, and the Class EA says that the Ministry of  
8 Citizenship may provide information on matters of that  
9 type.

10                  A. That's correct.

11                  Q. That's where the -- those are the two  
12 important aspects of this matter which we should be  
13 aware of in terms of timber planning?

14                  A. At this point today, yes.

15                  Q. What I want to ask you is: What  
16 system, if any, is in place to assure that sites of  
17 that type won't be missed?

18                  A. There is two approaches. One would  
19 be the circulation request for information as defined  
20 the timber management plan.

21                  That would go to government agencies,  
22 such as Culture & Communications; it would also go to  
23 the public and any member of the public that had  
24 specific knowledge or concerns.

25                  Those would be fed into the hopper and

1 would be analysed as part of the timber management  
2 planning process.

3 So it is not restricted to the Ministry  
4 of Culture & Communications. They were specifically  
5 identified here as the provincial agency with overall  
6 responsibility for that field of endeavour.

7 Q. Okay. But that ministry is doing  
8 something, and what it is doing is being part of a  
9 joint committee with your Ministry to develop  
10 guidelines for addresssing heritage resource interests  
11 in timber management; is that correct?

12 A. Yes, that's correct.

13 Q. I am reading from page 30 of Exhibit  
14 5A.

15 A. Right.

16 Q. What does your Ministry have in mind  
17 in terms of those guidelines?

18 A. Well, I am not an expert in this area  
19 and we have tried to put together experts in forestry  
20 and experts in heritage resouces to come up with a  
21 practical approach for addressing this issue.

22 I would suspect what it will be is  
23 somewhat similiar to the fisheries and moose guidelines  
24 which will give specific directions dealing with a  
25 variety of situations. I can't predict what those ones



1 will be.

2 Q. Is there going to be any effort to do  
3 a full inventory or, at least, attempt a full inventory  
4 of such sites before they are made available for timber  
5 harvesting?

6 A. The kind of information that would be  
7 required in order to apply the guidelines would be a  
8 specific consideration of that working group which is  
9 referred to in the memo to Mr. Montgomery.

10 Q. So you don't know?

11 A. Well, I would --

12 Q. I asked if there was going to be an  
13 effort to do a comprehensive inventory?

14 A. I don't know at this point in time.

15 Q. Thank you. Since we have referred to  
16 the checklist that appears at pages 13, 14 and 15 in  
17 Exhibit 5A, I have one more question about it.

18 I notice on the third page; that is, page  
19 15 of the collection, that federal lands, and an  
20 example is given of Indian reserves, are at least to be  
21 considered now, according to this directive; is that  
22 right?

23 A. What this directive says is that,  
24 first of all, that the list of items including Indian  
25 reserves is excluded from the timber management plan.

1 In other words --

2 Q. Well, it should be; shouldn't it?

3 A. Yes, we don't have jurisdiction  
4 there. What this says is that when you are looking at  
5 operations adjacent to those, those have to be  
6 explicitly considered as possible areas of concern.  
7 So...

8 Q. Okay, that was what I wanted to ask  
9 you.

10 When it says, and I will read from it,  
11 this is the last half of the sentence that begins with  
12 the capitalized word NOTE on page 15:

13 "These land uses must be considered when  
14 areas of concern are identified because  
15 operations may be planned for adjacent  
16 Crown lands."

17 I don't quite understand all that  
18 language. Could you just take me through it step by  
19 step?

20 A. Well, in developing a timber  
21 management plan, one would have to consider what  
22 possible uses would occur in these adjacent areas and,  
23 in some cases, those could have an impact on those  
24 reserves and, in those cases, one would have to go  
25 through a more detailed planning process to determine

1       whether those impacts were negative or not.

2                       In some cases there would be no  
3       operations proposed; in some cases there might be.  
4       There could, for example, proposals of roads in the  
5       vicinity, there could be proposals in terms of  
6       harvesting.

7                       Q.   You will have to help me a little bit  
8       with the part of the sentence which reads "...when  
9       areas of concern are identified..."

10                      Does that mean that your planners ought  
11       to, if they see an Indian reserve on the map in an area  
12       adjacent to what is proposed to be licensed, that they  
13       should consider automatically that there may be a  
14       concern there and look into it more carefully?

15                      A.   Yes, it does.

16                      Q.   Okay.  Has this gone out to your  
17       people yet?

18                      A.   Not as yet, we have just produced it.

19                      Q.   In the past, do you know if adjacent  
20       Indian reserves were taken into account in your timber  
21       management planning?

22                      A.   I don't have detailed knowledge of  
23       how that process is applied in the field, so I couldn't  
24       really answer that, Mr. Colborne.

25                      Q.   I notice that there is nothing about

1 Indian land and resource rights in this checklist.

2 A. No. What this talks about is -- it  
3 talks about resource values including fisheries,  
4 wildlife, berry picking, it talks about land uses,  
5 trapline, trapper cabins, it talks about wild rice, it  
6 talks about a variety of things.

7 It doesn't talk about rights explicitly,  
8 no. But given my understanding of what you have said,  
9 the concerns related to cutting, fishing and trapping  
10 would certainly be taken into account.

11 Q. Why would they be? I am not saying  
12 they wouldn't be, I am saying why would they be?

13 A. Because of the need to consider. For  
14 example, if you go under page 13, there is listings  
15 under Fisheries - I am referring to Document 5A on page  
16 13 - there are all kinds of fisheries habitat  
17 considerations, wildlife habitat considerations, which  
18 I would presume would be of importance to native people  
19 as well as anyone else interested in the use and the  
20 management of those resources.

21 Then I go into the facilities, if you  
22 wish, the built facilities. I look at trappers;  
23 cabins, they could very well be native --

24 Q. Well, sir, I think you began your  
25 answer by saying that you understood what I was



1 concerned about. I don't think you do. I am talking  
2 about not uses, but rights of use.

3 A. The rights are not identified here.

4 Q. And you would have to go to the  
5 general directions in the District Land Use Guidelines  
6 and so on in order to determine what one did about  
7 those rights questions; is that correct?

8 MR. FREIDIN: Mr. Chairman, this is the  
9 very issue, I think, by inference spoke to the other  
10 day.

11 Page 7 of the Environmental Assessment  
12 Document indicates how aboriginal and treaty rights are  
13 dealt with in this environmental assessment, and I am  
14 having difficulty in dealing with it in certain ways.

15 And I think Mr. Colborne is getting into  
16 that area again, and I repeat what I said before: This  
17 line of questioning in terms of rights is probably best  
18 left to Panel 6.

19 MR. COLBORNE: Well, I don't have any  
20 problem, Mr. Chairman, with restricting my questions on  
21 these topics, because finally, when I asked him again  
22 this morning, Mr. Freidin told me who was going to be  
23 on Panel 6.

24 However, I don't think that I should be  
25 utterly foreclosed from asking questions on these

1 topics because these witnesses in examination-in-chief  
2 volunteered certain information.

3 THE CHAIRMAN: Well, they are also  
4 familiar with the environmental assessment, I would  
5 assume, and realize how it has been treated in the  
6 Class EA Document.

7 I think you can ask the question, if you  
8 can answer the question and want to provide information  
9 above and beyond what is in the EA Document, I think  
10 you are free to ask it and they are free to answer it.

11 MR. COLBORNE: Thank you.

12 Q. The question, Mr. Douglas, was:  
13 Beginning with the fact that there is no expressed  
14 statement in this checklist about Indian land and  
15 resource rights, would one look to documents such as  
16 the District Land Use Guidelines to find what the  
17 policy and direction was on those topics, or would one  
18 look somewhere else?

19 MR. DOUGLAS: A. I think, as Mr. Freidin  
20 said, that the question of you wanting treaty rights,  
21 the best place to go is to the treaties, and even then  
22 you may not get full agreement on what the treaties  
23 mean.

24 You are not going to find specific  
25 statements on native rights or interpretations of

1 native rights within this checklist.

2 Q. No, we already know they are not in  
3 the checklist. The question is: Where do you go to  
4 find it?

5 I am suggesting to you that if you look  
6 in the District Land Use Guidelines you find some  
7 language that refers to that topic. I am not sure what  
8 it means - I won't ask you what it means, because I  
9 think we will have a panel - but is that where your  
10 local decision-makers go if a question arises, either  
11 in their minds or because it comes into the office, on  
12 whether there is an Indian right of use to this  
13 resource?

14 Where do they go; where do they look?

15 A. Well, if you ask me where I would go  
16 to find out what treaty rights were, I would go to the  
17 treaty.

18 Q. So your district people are expected  
19 to interpret Indian treaties as part of their job?

20 A. Well, you certainly would expect to  
21 get expert advice on that. This is a complicated area,  
22 which is recognized. There is certainly statements  
23 about --

24 Q. Well, sir, is it a complicated area  
25 or is it just an area that remains utterly unresolved

1 in perpetuity for some unknown reason?

2 I mean, there is a lot of complicated  
3 things in this life, what is so complicated about this  
4 one?

5 Certainly, timber management is  
6 complicated, we are going to be here, or some people  
7 are going to be here for a year and half talking about  
8 it, that's complicated, it gets dealt with.

9 Why can't you just take the question of  
10 native land use rights and say: It is complicated so,  
11 therefore, we will just forget about it?

12 A. I am using that term because I am not  
13 an expert in that area, so any kind of answer I would  
14 give you would not be particularly helpful to the  
15 Board.

16 THE CHAIRMAN: Well, just a moment.

17 Mr. Douglas, in answering his question,  
18 if you went to the land use guidelines, would you find  
19 in that document an interpretation or a statement  
20 concerning Indian treaty rights such that anyone  
21 looking at the document would know how they would  
22 handle the right of use that might arise.

23 From looking at the document, could they  
24 provide some kind of answer to a query concerning a  
25 treaty right?



1                   MR. DOUGLAS: I don't think they would be  
2 given specific direction there. There may be some  
3 cases where you would border on that for particular  
4 types of things; but, no, there wouldn't be...

5                   THE CHAIRMAN: I mean, is there another  
6 document that the Ministry produces where you could go  
7 to find that information?

8                   MR. DOUGLAS: Well, there is some  
9 internal policies in terms of, for example, leniency in  
10 applying the Fisheries Act and the Migratory Birds Act  
11 which -- and there are a number of other approaches  
12 which would be identified by Panel No. 6.

13                   So there is a number of different ways it  
14 is being -- that kind of situation is dealt with. They  
15 are certainly not all in the District Land Use  
16 Guidelines.

17                   So I couldn't answer that if you went to  
18 the District Land Use Guidelines, you would find  
19 explicit direction.

20                   MR. MARTEL: Can I ask a question because  
21 you yourself said it. You are not familiar with the  
22 area in question and have difficulty answering it.

23                   MR. DOUGLAS: Mm-hmm.

24                   MR. MARTEL: What happens to your staff  
25 in the field, I think is what we are looking for, in

1 terms of when a problem arises, they too can't be  
2 expected to be experts out in the field, where do they  
3 go, to whom do they turn for guidance or instruction or  
4 any number of issues to be resolved?

5 Who do they turn to to try and come up  
6 with a right answer at a given time?

7 MR. DOUGLAS: The direction would come  
8 from the main office groups dealing with that  
9 particular resource.

10 If you wanted, for example, an  
11 interpretation on trapping, you would go to the outdoor  
12 recreation group, and often these are  
13 enforcement-related matters and there is a specific  
14 section there that would deal with it.

15 If you got into something that was quite  
16 legal in terms of its interpretation, then you would go  
17 to our Legal Services Branch who would probably consult  
18 with the Attorney General.

19 MR. MARTEL: So the guidelines for your  
20 staff in the field are: Get to the appropriate  
21 official within the office of Queens Park?

22 MR. DOUGLAS: In these grey areas, yes.

23 MR. COLBORNE: Q. Just to follow up on  
24 that, Mr. Douglas, Exhibit 32, A Guide to the  
25 Organization and Management System. I am not certain

1       you need it before -- oh, you have yours.

2                   MR. DOUGLAS:  A.  Page...?

3                   Q.  Page 28.  This follows Mr. Martel's  
4       question.  There used to be a thing called Office of  
5       Indian Resource Policy; right?

6                   A.  Correct.

7                   Q.  And that office ceased to exist as of  
8       some time in early 1988?

9                   A.  Right.

10                  Q.  Before it ceased to exist, was it one  
11       of the places your district people would go to to  
12       obtain answers to these questions?

13                  A.  Yes.  That was transferred to the  
14       Office of Native Affairs Directorate.

15                  Q.  My question is:  Why does that Office  
16       of Indian Resource Policy no longer exist?

17                  A.  I am not sure of the details.  I  
18       believe it was a consolidation within the Ontario  
19       Native Affairs Directorate.

20                  THE CHAIRMAN:  Sorry, where did you say,  
21       Mr. Douglas, it went?

22                  MR. DOUGLAS:  It went to the Ontario  
23       Native Affairs Directorate, most of the function,  
24       particularly the land claims.

25                  THE CHAIRMAN:  That is under the Attorney

1 General's Department?

2 MR. DOUGLAS: Yes, that's right.

3 MR. COLBORNE: Q. According to the  
4 description of that office that, until recently,  
5 existed, the one on page 28 of Exhibit 32, it did quite  
6 a lot; it was consultant to the Ministry on all  
7 hunting, fishing, and wild rice matters, it  
8 co-ordinated all Ministry involvement in matters  
9 relating to Indian people -- these are very general  
10 terms though; don't you agree?

11 MR. DOUGLAS: A. Mm-hmm.

12 Q. I'm surprised that you didn't mention  
13 this office in answer to Mr. Martel's question about  
14 where one went. Is that because the office doesn't  
15 exist anymore?

16 A. That's right.

17 Q. Okay. So now, today, your field  
18 staff, if they have a question about something in this  
19 area, you say they go to, what, the Legal Services if  
20 it is legal and who if it is not legal?

21 A. The main office groups, the outdoor  
22 recreation which would have most of those matters  
23 because they have responsibilities for wildlife and for  
24 fisheries.

25 Q. Well, I am a little confused now.



1 I thought you said that the responsibilities of the  
2 Office of Indian Resource Policy were transferred to  
3 the Ontario Native Affairs Directorate, and now it  
4 sounds like some of it is still within your Ministry,  
5 but it doesn't have its own office?

6 A. I should clarify that. The land  
7 claims went. In terms of expert advice within the  
8 Ministry, it would be -- as I indicated, it would be to  
9 the outdoor recreation group in most cases.

10 They would -- of course, when they  
11 believed they were in an area that they didn't have the  
12 expertise in, they would have to consult with either  
13 the Legal Services people or the Ontario Native Affairs  
14 Directorate.

15 MR. MARTEL: Again, does this make it  
16 more complicated then for your staff or the various  
17 native groups. You have got part of it in the AG's  
18 office and your people go to your own legal people or  
19 people in parks or people in fisheries.

20 Does this make it more difficult in  
21 coping with a problem, or how does it simplify it?

22 MR. DOUGLAS: Well, I think the overall  
23 advantage is that we were finding that many of the land  
24 claims dealt with legal questions and it seemed to make  
25 more sense to have those in the AG's Office directly.

1                   The other thing is that the overall  
2 responsibility for corporate policy is in the Native  
3 Affairs Directorate, so that seems to have the  
4 advantage of consolidating that in one place.

5                   So whenever you make one of these  
6 adjustments in organization, there is up sides and  
7 there is down sides. But my understanding is that  
8 collectively the government viewed there was more ups  
9 than there was downs.

10                  MR. COLBORNE: Q. Well, I suggest, Mr.  
11 Douglas, there may be more confusion too because we  
12 also have a category called Special Negotiator Native  
13 Issues, and I want to know where that fits in to all  
14 this, it hasn't even been mentioned yet.

15                  Would you look at page 249 of the  
16 evidence summary. This is the organizational chart,  
17 the main one for the Ministry, and in the main central  
18 stem to the right--

19                  MR. DOUGLAS: A. Mm-hmm.

20                  Q. --there is a box that says Special  
21 Negotiator Native Issues. Where does that office fit  
22 into what you have just said?

23                  A. I don't believe that position exists  
24 any longer. To give you some background on this, from  
25 time to time the government has decided to nominate a

1 representative to negotiate matters, an example,  
2 dealing with natives.

3 In some cases that person would be within  
4 MNR, some cases that person would be elsewhere. I  
5 believe that position was identified in regards to the  
6 fisheries negotiations.

7 Q. And one of the witnesses in Panel 6,  
8 Mr. Crystal, had that position or one of those  
9 positions; is that correct?

10 A. Yes, that is.

11 Q. Are you now telling me that Mr.  
12 Crystal no longer fills that category in the  
13 organizational chart?

14 A. I should double check this, but I  
15 believe that Mr. Crystal now is in the Corporate Policy  
16 Secretariat.

17 THE CHAIRMAN: Mr. Colborne, we would  
18 like to take a mid-morning break, whenever it is  
19 convenient.

20 MR. COLBORNE: I have a couple of more  
21 questions about this organizational chart, perhaps I  
22 could just do that and then break.

23 THE CHAIRMAN: Very well.

24 MR. COLBORNE: Q. Mr. Douglas, could you  
25 look at Exhibit 32 again. It also has an

1 organizational chart at page 6.

2 MR. DOUGLAS: A. Yes.

3 Q. This would be the organizational  
4 chart in effect in, it looks like, 1979 or that is the  
5 date of this document?

6 A. Yes, yes.

7 Q. Toward the lower right of that chart,  
8 under the general heading Lands & Waters appears the  
9 Office of Indian Resource Policy.

10 A. Correct.

11 Q. That is where it existed at that time  
12 in 1979?

13 A. That's correct.

14 Q. Is that where it still existed as of  
15 earlier this year before it was disbanded?

16 A. Yes, it was under the Lands & Waters  
17 Program. That reflected the fact that the bulk of its  
18 work was associated with land claims.

19 Q. Now, I am sorry, sir, my recollection  
20 is not clear, but a few minutes ago you referred to  
21 where enquiries would go regarding Indian rights  
22 questions that came in from your field people.

23 Other than to Legal Services, I think you  
24 referred to another division of the Ministry. Which  
25 division is that?



1                   A. Are we talking about today or are we  
2 talking about sometime in the past?

3                   Q. Today.

4                   A. The questions would go to the program  
5 groups, most of them would go to the outdoor recreation  
6 group because of the fisheries and the wildlife  
7 concerns.

8                   Q. So your outdoor recreation people,  
9 other than legal questions, are now the experts on  
10 Indian rights to use land and resources in the  
11 Ministry?

12                  A. Plus the position in the Corporate  
13 Policy Secretariat would have contact within the  
14 ministerial level with the Ontario Native Affairs  
15 Directorate, so there would be expertise there as well.

16                  MR. COLBORNE: Thank you.

17                  This would be an appropriate time for a  
18 break.

19                  THE CHAIRMAN: Very well. The Board will  
20 take a recess for 20 minutes.

21                  Thank you.

22                  ---Recess at 11:20 a.m.

23                  ---Upon resuming at 11:45 a.m.

24                  THE CHAIRMAN: Thank you.

25                  Excuse us, Mr. Martel forgot his hearing

1 book upstairs so we will have to wait.

2 MR. FREIDIN: While you are doing that, I  
3 have a couple of matters. I have a copy of the Final  
4 Report of the Recommendations of Mr. Fahlgren for the  
5 Board. (Handed)

6 THE CHAIRMAN: So this will be the whole  
7 document rather than just Chapter 8. Perhaps we will  
8 enter this as a separate exhibit.

9 We would be up to Exhibit No. 33, I  
10 believe, which will be the Final Report Recommendations  
11 of Commissioner J.E.J. Fahlgren, dated June, 1985.

12 ---EXHIBIT NO. 33: Final Report Recommendations of  
13 Commissioner J.E.J. Fahlgren dated  
June, 1985.

14 MR. COLBORNE: Just while we are waiting,  
15 Mr. Chairman. On that topic, have you got any more  
16 copies?

17 MR. FREIDIN: I could scrounge it up. I  
18 assumed you had a photocopy.

19 MR. COLBORNE: I have excerpts which I  
20 have photocopied, Mr. Chairman, and presented, so  
21 there may be a numbering question that arises and I'll  
22 just alert you to that now.

23 THE CHAIRMAN: Well, unless there is  
24 objections, why don't you produce whatever excerpts you  
25 want and we will give the specific excerpts a different

1 exhibit number. We will just keep the complete report  
2 marked as Exhibit No. 33.

3 MR. COLBORNE: That is fine with me.

4 THE CHAIRMAN: Any problem with that, Mr.  
5 Freidin?

6 MR. FREIDIN: If in fact the exhibit is  
7 just going to be pages 100 to 150 of Exhibit 33, I am  
8 not sure it is a problem and we would need to give it  
9 an extra number.

10 THE CHAIRMAN: Well, the problem is,  
11 though, is that the excerpts will be handed around to  
12 everyone and they will not really have a number, so  
13 people will have masses of paper without particular  
14 exhibit numbers.

15 I think we would be better off keeping  
16 the documentation that is handed around to the parties  
17 and distributed with specific exhibit numbers.

18 MR. FREIDIN: Just one other matter.  
19 Some people were asking me about extra copies of  
20 witness statements and I am advised that they can  
21 obtain additional copies by contacting Shel/Don  
22 Reproduction Centre Ltd., attention of Allan Bradshaw,  
23 107-1265 Arthur Street East and his phone number is  
24 623-1371.

25 If anybody didn't get that, I have got

1 the information here.

2 THE CHAIRMAN: Mr. Colborne?

3 MR. COLBORNE: Thank you, Mr. Chairman.

4 Q. Mr. Monzon, at page 10 of the witness  
5 statement, paragraph 6, the objective of the forest  
6 resources program is set out, and in the transcript of  
7 your evidence-in-chief, you re-read that into the  
8 evidence, into the record.

9 My question to you is: How long has that  
10 stated objective in those words been in force; do you  
11 know?

12 MR. MONZON: A. In those specific words?

13 Q. Yes.

14 A. I don't know offhand. I would  
15 estimate in the order of about a year, no more. The  
16 objectives are reviewed from time to time and  
17 adjustments are made to them.

18 Q. I was looking at Exhibit 32, that is  
19 A Guide to the Organization of Management System at  
20 page 24 and it seemed to have a different expression of  
21 the objective.

22 Now, I know that the structure of the  
23 Ministry changed somewhat, but if you could look at  
24 that, page 24 of Exhibit 32. Have you found that?

25 A. Yes, I have.



1 Q. Toward the bottom of the page, under  
2 the general heading Forest Resources Program appears in  
3 italics the following sentence:

4 "Responsible for achieving the forest  
5 resources products objectives of the  
6 Ministry."

7 Is it your understanding that that is a  
8 previous version of the -- or previous statement of the  
9 objective of the Forest Program?

10 A. I don't believe that that is -- those  
11 words in the italics are a statement of the forest  
12 resources program. I don't believe that that was the  
13 objective of the Ministry at that point in time.

14 Q. Are you familiar with Exhibit 32  
15 sufficiently to tell me if a statement of the objective  
16 of the Forest Program might be found elsewhere in that  
17 exhibit?

18 If you are not, just say...

19 A. No, I am not. I would have to  
20 search.

21 Q. I have here, sir, another version of  
22 the organizational guide of the Ministry. This one not  
23 dated, but obviously earlier in time than Exhibit 32.  
24 I would like to show it to you. (handed)

25 Do you recognize that?

1 A. Yes, I do.

2 MR. COLBORNE: Could this be marked as an  
3 exhibit as an undated earlier version of Exhibit 32  
4 from the Ministry.

5 THE CHAIRMAN: That will be Exhibit 34.

6 ---EXHIBIT NO. 34: Undated earlier version of  
7 Exhibit 32.

8 MR. COLBORNE: Q. Sir, I haven't copied  
9 all of the pages of this, and I will just say for the  
10 record that I had copied the Title Page, the Table of  
11 Contents, the short Introduction page and the  
12 Appendices 1 and 2. I did not copy the text of the  
13 main body of the document.

14 MRS. KOVEN: Is this document dated 1972,  
15 Mr. Colborne?

16 MR. COLBORNE: There is no date as such  
17 on it. There is, in the introduction page, which is  
18 the third sheet - I don't know if the numbers came  
19 through - a reference to the fact that the Ministry of  
20 Natural Resources came into being April 1st, 1972.

21 Other than that, I have searched the  
22 document from beginning to end and it is not dated.

23 THE CHAIRMAN: Well, it would certainly  
24 be after 1970.

25 MR. COLBORNE: Yes.

1 THE CHAIRMAN: Because the statutes  
2 referred are Revised Statutes of Ontario, 1970.

3 MR. COLBORNE: Yes.

4 MR. MONZON: Mr. Chairman I believe this  
5 would have been issued 1972-73.

6 MR. COLBORNE: Q. Now, in Appendix 2  
7 there are outlines of various activities of the  
8 Ministry as they were then defined.

9 And at page - and I am afraid the numbers  
10 are cut off my copy and they are probably cut off  
11 everybody's copy - so if I could refer you, sir, to the  
12 third leaf in from the back of what I have produced to  
13 you.

14 MR. MONZON: A. Yes.

15 Q. And at the top of that page you find  
16 the words: "Division of Forests", is that what you  
17 have?

18 A. That's correct.

19 MR. COLBORNE: Mr. Chairman, I don't have  
20 pages, but I ask if the members of the panel have found  
21 the page?

22 THE CHAIRMAN: Yes.

23 MR. COLBORNE: Q. And under the heading  
24 Division of Forests there is another sub-heading Forest  
25 Management Branch and then the following words:

1 "Plans and co-ordinates programs to  
2 manage forests and to assure the supply  
3 of trees to meet present and future needs  
4 of Ministry programs in the public  
5 through..."

6 And then it goes on to set out certain  
7 things that that branch does.

8 Now, is that an earlier version of the  
9 objective of the Forest Program as it was then  
10 constituted?

11 MR. MONZON: A. That would be an  
12 earlier - and I am going back in my memory - it would  
13 have been an earlier version of the objective for the  
14 Forest Management Branch, the Forest Research Branch  
15 and the Timber Sales Branch within the Division of  
16 Forests and those are all subtitles of branches on  
17 those -- on that page.

18 Q. Okay. Now, you have said that these  
19 statements of objectives do change from time to time.  
20 For what reason?

21 A. From time to time the Ministry  
22 reviews its organization and reviews the way in which  
23 it is managing and part of that review is a review of  
24 the various objectives and the goal of the Ministry in  
25 terms of making sure that it is focused on what it



1 should be trying to achieve.

2 Q. To my reading, sir, the version in  
3 this 1972 or '73 document is more, shall we say,  
4 conservationist, whereas the version that we now have  
5 is more harvesting oriented. Do you agree?

6 A. I am not --

7 Q. Well, let me just read. I am looking  
8 at Exhibit 33:

9 "The Forest Management Branch plans and  
10 Co-ordinates programs to manage forests."  
11 That is the first part before the "and"?

12 A. Yes.

13 Q. Now, if we look at the present  
14 objective, it also has two parts separated by an "and":

15 "...to provide for an optimum continuous  
16 contribution to the economy by forest-  
17 based industries."

18 A. Yes.

19 Q. Now, back in the 70s you were dealing  
20 with just generally co-ordinating the management of  
21 forests as the first part of the objective, or at least  
22 the objective as it was expressed for purposes of this  
23 document at this time. Whereas now today the first  
24 part of the objective is basically to serve industry.

25 A. Well, the objective that you are

1 quoting, Mr. Colborne, is in Document 33 is an  
2 objective of one branch and reflects the thinking of  
3 that time which would be 1972-73.

4 What is missing from the page in question  
5 is an objective for their -- or the goal of the  
6 Division of Forests, per se and, in fact, such a goal  
7 statement may not have existed at that point in time.

8 Q. But, sir, even if you look at all of  
9 the detail on that particular page under Forest  
10 Management Branch and under Timber Sales Branch, can  
11 you find anything comparable to what we now have in  
12 1988:

13 "To provide for an optimum continuous  
14 contribution to the economy by  
15 forest-based industries."?

16 A. I think one of the points we were  
17 trying to make in the revision of the objective for the  
18 program is: Why does an organization undertake  
19 particular activities, why does it collect and analyze  
20 information on production and transportation, marketing  
21 of timber, and why does it regenerate the forests, why  
22 does it conduct feasibility studies, and part of that  
23 objective is to provide optimum contribution to the  
24 economy of the -- an optimum contribution to the  
25 economy by forests-based industry.

1 Q. Yes, but wouldn't you agree that in  
2 the current phrasing the contribution to the economy by  
3 the forest industries isn't just one of a number, it is  
4 the one and everything else is sort of added into the  
5 tag-along part of the sentence, whereas in the much  
6 earlier version, the entire object was just a general  
7 management for the public good; there was no focusing  
8 on the needs of industry as the objective of that part  
9 of the Ministry.

10 A. Well, I think one of the things we,  
11 as I say, attempted to come to grips with over the  
12 years is why in fact a program is in business; what is  
13 the end result.

14 And from the forest resources standpoint,  
15 we have arrived at the point of contribution to the  
16 economy as well as provision of other uses through  
17 environmentally sound timber management practices. The  
18 two are linked.

19 Q. Yes, but it is not your contribution  
20 to the economy or the forest's contribution to the  
21 economy, it is the contribution to the economy by the  
22 forest-based industries.

23 That is your concern, that is your first  
24 concern, your first-named concern; right?

25 A. I think it has to be clear that the

1 concerns about contribution to the economy, as well as  
2 making sure that those contributions happen through  
3 environmentally sound practices, go hand-in-hand. It  
4 is not necessarily a question of which comes first.

5 I mean one can -- I can understand how  
6 one could have that point of view from reading the  
7 objective statement on page 10.

8 Q. Thank you. I wish to now ask some  
9 questions about the Report and Conduct of the Royal  
10 Commission on the Northern Environment, and these  
11 questions --

12 A. Mr. Colborne if I might.

13 Q. Yes.

14 A. You asked me a question earlier  
15 relative to local and traditional users.

16 Q. In the Wawa District Land Use  
17 Guidelines?

18 A. In the Wawa District Land Use  
19 Guidelines.

20 Q. Yes.

21 A. If I check the Wawa District Land Use  
22 Guideline relative to Kenora and I compare the  
23 northwest and the northeastern strategic planning  
24 documents, I think if you look on page 9 of the Kenora  
25 document, if you have that.

1                   Q. I don't have it here today, I will  
2 have it here this afternoon, but I will make a note of  
3 what you are telling me.

4                   A. Okay. On page 9 under the section  
5 entitled General Policy, there is a section entitled:  
6 Public Interest and that section appears in both the  
7 Kenora document as well as the northwestern strategic  
8 planning document.

9                   Q. And doesn't it also appear in the  
10 Fort Frances document and the Dryden document in  
11 exactly the same language?

12                  A. I am assuming it would, not having  
13 checked those documents.

14                  My point being: That under that section  
15 of Public Interest there is discussion about the point  
16 that the resources of the province are to be  
17 administered in the best interests of the population of  
18 the whole.

19                  The special interests of the residents of  
20 the area where the resources are located have to be  
21 taken into account.

22                  And it also says that:

23                  "traditional native rights, both within  
24 provincial parks and on Crown land, will  
25 continue to be respected."



1                   So I just make the point that it is  
2                   referenced there.

3                   Q. Oh, I am not saying there isn't  
4                   reference.

5                   In fact I will be saying that there is a  
6                   word formula that simply seems to be inserted in each  
7                   one of them.

8                   But I wanted to know why there wasn't a  
9                   separate heading actually treating of that issue in  
10                  these areas where there was large Indian populations,  
11                  as opposed to the Wawa area where there isn't a large  
12                  Indian population and there is a separate section of  
13                  the discussion.

14                  A. It would simply be a difference in  
15                  the format in which the documents were prepared and a  
16                  continuation of that format from the strategic level  
17                  into the district documents.

18                  One chose to do it under the title of  
19                  Local and Traditional Users, another chose to do it  
20                  under the title of Public Interest.

21                  And there can be, you know, discussion as  
22                  to which is more appropriate.

23                  Q. Yes, but there is a lot more in the  
24                  Wawa one than there is in the untitled paragraph in the  
25                  Kenora one; right?

1                   A. I would agree that there is certainly  
2 more in terms of verbiage; whether or not the main  
3 points are any different, I am not sure I would agree  
4 with that.

5                   Q. Any idea why the wording in District  
6 Land Use Guidelines would be identical from one to  
7 another in some cases?

8                   A. Well, in some cases we wanted to make  
9 it very clear, both to staff and public in the planning  
10 area that -- and some issues were such that they had --  
11 we wanted to make sure there was consistent treatment.

12                  Q. And would that be the reason why the  
13 brief passages in the Kenora, Dryden and Fort Frances  
14 District Land Use Plans are identical, if they are?

15                  A. Yes.

16                  Q. And when you say "we", are you  
17 talking about main office level or are you talking  
18 about the Ministry in general?

19                  A. Talking about the Ministry.

20                  I am sorry, but you had left that point  
21 with me and I wanted to clear it up.

22                  Q. No, thank you. I think I may be  
23 returning to that a little later.

24                  Now, Exhibit 33 is the Report of the  
25 Royal Commission on the Northern Environment.

1                   Exhibit 24 is Chapter 8 of the Final  
2       Report of that Commission.

3                   I ask you, sir, to pick up Exhibit 24, if  
4       you have it.

5                   A. Chapter 8?

6                   Q. It is Chapter 8 of the Final Report,  
7       yes.

8                   A. Yes?

9                   Q. Now, some of these points were  
10      reviewed by Mr. Castrilli, so I don't want to repeat  
11      his questioning, and I think some of them were  
12      discussed in a fair amount of detail by yourself.

13                  So please don't feel that you have to  
14      repeat yourself and feel free to remind me, if you  
15      think I am getting into something that you think you  
16      have already addressed.

17                  On page 1 of Chapter 8 it says that:

18                  "Many northerners still consider that the  
19      north has become an economic colony of  
20      the south."

21                  You lived in the north for a long time,  
22      do you agree?

23                  I am not asking if you agree whether the  
24      north is a colony itself.

25                  I am asking you whether you agree that

1 many northerners still consider that to be the case?

2 A. If I might, I would not characterize  
3 it as an economic colony.

4 I would agree that many northerners feel  
5 that there is an undue influence out of the south.

6 Q. Do you believe, as a manager and a  
7 senior official within the Ministry, that that belief  
8 creates any problems for the job that your Ministry is  
9 trying to do, that perception?

10 A. Well, certainly that -- I guess the  
11 short answer to your question is, yes, because one of  
12 the things we have been trying to establish is to move  
13 the decision-making within the organization, as I have  
14 indicated earlier, down to the district level.

15 So if people who live in northern Ontario  
16 feel that there is undue influence out of southern  
17 Ontario, then the perception I think can be: Well, you  
18 know, do the people at the district level have any real  
19 decision making power.

20 Q. I see. And do you think that is  
21 generally succeeding; are you getting somewhere with  
22 that?

23 A. My sense is that we are certainly  
24 better than we were. I couldn't chart it on a scale of  
25 1 to 10. I think it is improving, and I would be the

1 first to say that there is still a way to go.

2 Q. At page 2 of Exhibit 24, page 2 of  
3 page 8, the Commissioner says that where you have  
4 planning by a single agency, such as MNR.

5 Then there are problems relating to the  
6 fact that the single agency, MNR, has a narrow range of  
7 responsibilities and yet has this broad planning scope.

8 Do you agree with the Commissioner that  
9 that does create a problem for you in terms of  
10 planning?

11 A. Well, I think the areas of  
12 responsibility of the Ministry were and continue to be  
13 reasonably well defined.

14 It depends to the extent that one wants  
15 to undertake a holistic approach.

16 It can be done either way, given the  
17 mandate of the Ministry.

18 I was comfortable with the process that  
19 we followed in terms of meeting the mandate of the  
20 Ministry.

21 Q. On that same page, the Commissioner  
22 says that your Ministry wields great power while  
23 remaining largely unaccountable.

24 Do you agree with that characterization  
25 of the power and accountability of your Ministry?



1                   A. I am not sure on what basis he makes  
2                   that determination. Certainly managers within this  
3                   organization are accountable for what they do.

4                   Q. Yes, but within the Ministry they are  
5                   accountable certainly?

6                   A. And certainly -- I was going to say,  
7                   certainly the Minister is accountable to the  
8                   legislature in terms of the overall activities of the  
9                   Ministry.

10                  Q. Well, you know, that elsewhere in the  
11                  Report the Commissioner was much concerned that perhaps  
12                  there wasn't much accountability to the legislature  
13                  because there was no statutory basis for so much -- no  
14                  expressed statutory basis for so much of what the  
15                  Ministry did.

16                  And especially planning; that the  
17                  legislature would never get an opportunity to debate  
18                  the rules under which your Ministry carried on its land  
19                  use planning activities, for instance, because they  
20                  didn't appear in any statute, never had, and there were  
21                  no plans to put that type of thing in a statute of the  
22                  legislature.

23                  Now, given that the Commissioner did  
24                  express that concern, do you still say what the  
25                  Ministry does is subject to significant review by the

1 legislature?

2 A. Well, I would still say that the  
3 Minister is accountable for the actions of the  
4 Ministry.

5 I think one has to - and we have tried to  
6 make this point earlier, I believe, perhaps not  
7 successfully - that the land use guidelines for the  
8 districts for which they were prepared across northern  
9 Ontario are indications as to how the Ministry intends  
10 to use the land and water resources.

11 They do not make decisions; they are not  
12 decision-making documents.

13 Q. You are quite aware, sir, that the  
14 Commissioner didn't agree with that distinction.

15 And, in fact, if you look at the top of  
16 page 8-5 of Exhibit 24 you find the Commissioner saying  
17 in his Final Report that -- I will read, beginning at  
18 the top of page:

19 "The placing of resource management  
20 considerations largely outside the domain  
21 of land use planning creates an arbitrary  
22 distinction between ends and means and,  
23 thereby, raises questions about the  
24 appropriateness an attainability of  
25 objectives, impairs the generation of

1 plan options and complicates the issue of  
2 the applicability of the Environmental  
3 Assessment Act to the planning system."

4 Now, sir, I heard what you said and I am  
5 not saying that is not a valid point of view, but don't  
6 you agree that the Commissioner examined that point of  
7 view and, in his Final Report concluded - and the  
8 paragraph that I just read represents the conclusion, I  
9 submit to you - concluded that it simply wasn't correct  
10 as far as he was concerned and as far as his Final  
11 Report was concerned?

12 A. Certainly Mr. Fahlgren, in his Final  
13 Report, indicated a number of problems and the concerns  
14 that he had about the land use planning process of the  
15 Ministry, that's right.

16 Q. Now, if you look at page 20 of  
17 Exhibit 24, what you will find is the Commissioner  
18 stating his views as to why the Ministry of Natural  
19 Resources changed its position on whether its land use  
20 plans would be subject to environmental assessment.

21 And you surely have some knowledge of the  
22 process by which those decisions were made, or am I  
23 assuming too much?

24 A. No, I have some knowledge of that.

25 Q. Yes. If I could paraphrase without

1 reading a long portion from the exhibit, I will tell  
2 you what paragraphs I am paraphrasing.

3 Paragraph -- excuse me, I should be  
4 commencing at page 8-19, not 8-20.

5 What I would be paraphrasing is the last  
6 paragraph on page 19, and the first and second  
7 paragraphs on page 20.

8 I read them to say that Commissioner  
9 Fahlgren thought that the Ministry; that is, your  
10 Ministry, wanted to change the status of its proposed  
11 land use plans to land use guidelines for two reasons.

12 One was because the Ministry wanted to  
13 maintain flexibility. That may mean something very  
14 similar or identical to what I have heard you saying,  
15 Mr. Monzon, and; that is, there is a danger in having  
16 plans slavishly followed.

17 Have you said that type of thing?

18 A. Yes, I believe I have said words to  
19 that effect.

20 Q. Here the Commissioner says that  
21 perhaps the Ministry found flexibility to be a more  
22 acceptable goal than its opposite, whatever its  
23 opposite may be.

24 Now, he was speculating there, but you  
25 have just told me you had some involvement with or you



1 have some knowledge of why that decision was taken.

2 So would you tell me now, is the  
3 Commissioner correct? Was that one of the  
4 considerations of the Ministry when it changed its view  
5 as to whether the District Land Use Plans would be  
6 subject to environmental assessment?

7 A. Certainly the issue of flexibility  
8 was a consideration all the way through the development  
9 of the planning documents.

10 The second aspect of it, though, is the  
11 connotation of the word plan and the legal authority of  
12 the term plan. If I might --

13 Q. Let's just stick with flexibility for  
14 a second, if you don't mind, so just we can conclude  
15 the discussion of that.

16 Are you saying that throughout the entire  
17 planning process, from wherever it began - 25 years  
18 ago, 100 years ago, 10 years ago, it doesn't matter -  
19 flexibility was always one of the concerns?

20 A. I believe, if I am not mistaken, that  
21 in the Guidelines for Land Use Planning there is  
22 reference to the fact that there needs to be - and I  
23 may not be using the right word in terms of  
24 flexibility - but the plans have to be such that they  
25 can be reviewed and revised and be able to take into



1 account changes in real situations.

2 Q. Does that mean that the Commissioner  
3 is wrong when he speculated that the desire for  
4 flexibility was probably one of the reasons why the  
5 Ministry, at a very late date, decided its District  
6 Land Use Plans should not be subject to environmental  
7 assessment, because flexibility had been part of the  
8 priority list, let's say, right from day one?

9 A. Certainly the notion of flexibility  
10 did not simply emerge at the last minute. It was  
11 always a consideration in the development of the  
12 planning documents.

13 Q. Okay. At the very bottom of page  
14 8-19 the Commissioner refers to a - I will quote the  
15 words: "This tardy revision".

16 Now, he is talking about the revision  
17 from plans to guidelines?

18 A. Yes.

19 Q. So I take it you are now saying that  
20 it was other considerations than flexibility which had  
21 to do with that revision?

22 A. Yes.

23 Q. Okay. Tell me what those were?

24 A. I guess the specific one would be, as  
25 I think I indicated this earlier in previous testimony,

1 the notion that a plan, if approved as a plan, would be  
2 perceived as a document that was set in stone, and I  
3 think this is where I used the term slavishly adhered  
4 to.

5 One of the things that the Minister of  
6 the day did was to make an indication to Mr. Fahlgren  
7 in 1983 and he spoke to the issue of plan and planning  
8 and --

9 Q. Yes, I think you read that.

10 A. --I think it would be appropriate,  
11 Mr. Chairman, to read that into the record.

12 Q. Well, it has been read into the  
13 record.

14 A. Not this portion, I don't believe.

15 Q. Oh. Tell me which portion --

16 A. This will be on page 8-16 at the  
17 bottom, Mr. Pope says:

18 "Well, first of all, the use of the word  
19 plan is one of the issues that Cabinet is  
20 examining in the total review of this  
21 issue.

22 It's been one of the contentious  
23 issues that has arisen during the course  
24 of public forums and open houses.

25 And the whole purpose of the exercise

1                   that the Ministry undertook was one of  
2                   information gathering and information  
3                   dissemination.

4                   And I have indicated on many occasions  
5                   that there will be a number of pieces of  
6                   information and documentation that I  
7                   would look to when I make an allocation  
8                   decision under the laws of the Province  
9                   of Ontario."

10                  Then there is Mr. Surdykowski, the  
11       Solicitor representing the Kayahna Area Tribal Council,  
12       he says:

13                  "Well, my question really boils down to  
14                  this: If this is not, by this I  
15                  mean the West Patricia land use document,  
16                  this document here, which when I look at  
17                  it says land use plan, that's not  
18                  designed to give an outline for what's  
19                  going to happen.

20                  I mean, why was the term land use plan  
21                  used?"

22                  Mr. Pope: Well, obviously because  
23                  there's such a disagreement over what  
24                  it means, it probably shouldn't have been  
25                  used."

1                   My point underlying or underneath all of  
2                   that, Mr. Colborne, would be that the plans in the  
3                   municipal planning sense imply decision.

4                   Q.   Yes.   Well, tell me, tell me --

5                   A.   And the land use guidelines were  
6                   never intended to imply decision, they were intended to  
7                   imply direction.

8                   Q.   And nobody in an enormous and  
9                   powerful industry like yours realized until 1983 that  
10                  they were misleading people by using the term plan?

11                  Didn't you have some communication  
12                  outside of your Ministry to find out that sooner or  
13                  later somebody would come along and say:  A plan is a  
14                  plan; isn't it?

15                  A.   Well, certainly there was discussion  
16                  about the issue internally within the Ministry and Mr.  
17                  Pope, as Minister of the day, made a decision.

18                  Q.   The questions that I have been asking  
19                  have to do, though, with whether those plans would be  
20                  subject to environmental assessment.

21                  And the Report of the Commissioner says  
22                  quite clearly that until late in the game it was stated  
23                  by everybody who was interested in that question that  
24                  they would be, but at a certain point in time it was  
25                  decided that they would not be.

1                   And that's the change that he is  
2                   referring to - excuse me - as a tardy revision.

3                   So you have said that one of the reasons  
4                   for that was the perception, a plan would be perceived  
5                   as something that it wasn't if it continued to be  
6                   called a plan?

7                   A. Yes.

8                   Q. Okay. Did you also start to say  
9                   something about plans, some legal question about plans  
10                  as defined in the Environment Assessment Act or as  
11                  referred to in the Environment Assessment Act?

12                  A. No, I don't believe so.

13                  Q. I cut you off at one point because I  
14                  thought you were getting into something that was not  
15                  responsive to my question.

16                  A. I think that point came about  
17                  relative to an earlier reference I had made relative  
18                  to - and I won't read it - relative to Mr. Pope's  
19                  statement in front of Mr. Fahlgren and a subsequent  
20                  statement by the Minister of the Environment.

21                  THE CHAIRMAN: Mr. Colborne, are you  
22                  making the submission indirectly that the change from a  
23                  plan to a guideline was in order to avoid the necessity  
24                  of coming under the Environmental Assessment Act  
25                  because the Environmental Assessment Act requires an



1 approval on a plan, as well as an undertaking?

2 MR. COLBORNE: Yes.

3 Q. On page 20; that is, 8-20, the  
4 Commissioner speculates that a second reason why the  
5 Ministry made the change that it made - and I will  
6 paraphrase here again, I have been trying to move along  
7 a little more quickly, but without success so far - is  
8 that by changing from a guide -- from a plan to a  
9 guideline, you would, or the Ministry would be less  
10 subject to public challenge.

11 Is that the word that appears there, and  
12 then the next paragraph refers to the Environmental  
13 Assessment Act.

14 Do you agree that one of the reasons why  
15 the Ministry did what it did was to avoid public  
16 challenge?

17 MR. MONZON: A. I wouldn't agree with  
18 that, Mr. Colborne. Certainly the actions of the  
19 Ministry in even just the administrative organization  
20 structure of the Ministry, in attempt -- you know,  
21 putting in place some 46 or 47 districts, and I think  
22 getting that decision making down to the local level,  
23 would indicate to me that the Ministry is looking to  
24 every opportunity to make sure that there is public  
25 input and --

1                   Q. Well, sir, just a second. Public  
2 challenge is the question. I know that's not a  
3 technical term or anything, but I would ask you to at  
4 least to assume that it doesn't mean public input as  
5 you have been using that term.

6                   A. I have no problem with the term  
7 public challenge. Questioning decisions that this  
8 organization makes is certainly everybody's right.

9                   And one of the reasons, again, that we  
10 wanted to -- that we put in the organizational  
11 structure that we did was to put the district offices  
12 in place and put the managers in place so they would be  
13 closer to the people so that those challenges and those  
14 questions could take place.

15                  Q. Okay. I suggest, sir, that you are  
16 using the term public challenge as virtually  
17 interchangeable with public input.

18                  Whereas in the portion of the  
19 Commissioner's Report that I am referring to, he is  
20 using the term public challenge in a more formal sense.

21                  And, particularly, in the sense of the  
22 right of the public under the laws of Ontario in  
23 certain circumstances to have matters that affect the  
24 environment formally assessed at hearings.

25                  So given that clarification of the way I

1 read the document, do you agree or do you disagree that  
2 the Ministry wanted to avoid that type of public  
3 challenge?

4 A. I don't see that the Ministry is  
5 attempting to avoid public challenge by revising the  
6 name of a document to reflect the proper intent to  
7 which the document was intended.

8 Q. Would that response that you have  
9 just given apply to the change from forest management  
10 to timber management which has been discussed here, as  
11 well as to the change from land use plans to land use  
12 guidelines as we are now examining?

13 A. I believe that it would.

14 I mean, the crux of the matter is what is  
15 the -- what the intent is relative to the development  
16 of a particular document and the title of the document  
17 should reflect the intent as closely as possible.

18 THE CHAIRMAN: Is it not really the  
19 importance of, not the title and not even the intent,  
20 but perhaps the legal effect of what the document can  
21 or cannot do?

22 By that I mean, if it is a guideline it  
23 has no legal force and effect, it is merely a  
24 directive.

25 If it is characterized as a plan in a

1 formal legal sense, it may convey some rights which  
2 then trigger other things that can happen under certain  
3 other statutes, whether Planning Acts, Environmental  
4 Assessment Acts, et cetera.

5 MR. MONZON: I would agree with your  
6 observation, Mr. Chairman, that it is a legal right.

7 To use your example, the use of the term  
8 planning provides the perception that this is a legal  
9 document.

10 And, therefore, there are certainly --  
11 whatever is prescribed within that document has to be  
12 adhered to, and I think we have attempted to  
13 demonstrate that was not the intent here.

14 Certainly I think it is important that  
15 given what you've said about the legal right, that it  
16 is important that the title of the document, as clearly  
17 as possible, reflects that intent and that's -- I am  
18 sorry, that's the point I am trying to make.

19 THE CHAIRMAN: But do you not also feel,  
20 Mr. Monzon, that there can be a legal document that  
21 also carries within it flexibility?

22 In other words, it could be a plan which  
23 could allow the formulator of the plan certain  
24 discretion within certain areas, but if it were a plan  
25 it might also be subject to public review under, say,



1 the Environmental Assessment Act because it is defined  
2 in that way.

3 It does not necessarily mean, at least to  
4 my mind, that if it has a legal force and effect, it  
5 kills discretion.

6 MR. MONZON: I would agree, Mr. Chairman,  
7 that there are opportunities in the construction of a  
8 plan to provide for flexibility.

9 Relative to the Environmental Assessment  
10 Act, my understanding from other transcript in Mr.  
11 Fahlgren's Report is that there is an understanding  
12 that municipal plans are also not subject to the  
13 Environmental Assessment Act, and I stand to be  
14 corrected on that, but that's my understanding.

15 THE CHAIRMAN: That may be because of a  
16 specific interpretation or exemption--

17 MR. MONZON: Yes.

18 THE CHAIRMAN: --by way of a class  
19 exemption, I don't know.

20 MR. MONZON: I don't know.

21 THE CHAIRMAN: I cannot say that either  
22 at this point.

23 But I guess I am just a little confused  
24 about your reliance upon the fact that if you call it a  
25 plan it gives up the measure of flexibility that the



1 Ministry wants to retain and yet -- and that is the  
2 intent, to convey to the public that you want to retain  
3 the flexibility and, therefore, it is going to be a  
4 guideline.

5 And yet there is a very important  
6 question as to whether or not it is called either a  
7 plan or guideline, what the legal effect of that is.

8 What I am saying is, that if it is not  
9 called a plan in the formal sense, there are definitely  
10 legal implications that flow from that.

11 MR. MONZON: I guess I would have to go  
12 back to the whole philosophy of the Ministry relative  
13 to "planning" and what was intended in setting  
14 strategic district direction and then district  
15 direction and then getting - to what Mr. Douglas has  
16 described - the resource management planning and  
17 dealing with the decision levels right on the ground.

18 It is a discussion that could go on for  
19 some time.

20 And I go back, again, the decision  
21 relative to the term plan versus guideline was one that  
22 was made.

23 The Minister of the day was very clear  
24 when we made that, and we have proceeded from there.

25 MR. COLBORNE: Q. Mr. Monzon, a few

1 minutes ago you read from what the then Minister of  
2 Natural Resources said in April of 1983 at a hearing of  
3 the Royal Commission on the Northern Environment; is  
4 that correct?

5 MR. MONZON: A. Yes.

6 Q. Under cross-examination by Mr.  
7 Castrilli earlier, you read from, I think - and you can  
8 correct me if I am wrong - page 50 of Appendix 14--

9 A. Yes.

10 Q. --to Exhibit 33?

11 A. Yes.

12 Q. And when I suggested that you were  
13 reading -- you were proposing to read something that  
14 you had already read, I thought that you were going to  
15 read the same thing.

16 I just wanted to explain that.

17 But also, to ask you whether the portion  
18 of the Appendix 14 to Exhibit 33; that is, the portion  
19 that appears at page 50 that you read earlier, was in  
20 response to questions raised by the Commissioner?

21 Is that your understanding, that that  
22 passage at page 50 that you have read already is from a  
23 letter and that that letter was in response to  
24 enquiries from the commissioner?

25 A. Yes, that's my understanding

1 according to the text on page 50.

2 MR. COLBORNE: Mr. Chairman, I have a  
3 photocopy set of Appendix 14 to this Commission Report.

4 THE CHAIRMAN: Very well.

5 We will mark this next document as  
6 Exhibit 35, and it is entitled A Staff Paper Prepared  
7 for the Royal Commission on the Northern Environment by  
8 Ian S. Fraser, Director of Research, dated 1985, and it  
9 is entitled on the bottom Appendix 14. I believe it is  
10 Appendix 14, in effect, to Exhibit 33; is that correct?

11 MR. COLBORNE: That is correct, Mr.  
12 Chairman.

13 ---EXHIBIT NO. 35: Document entitled A Staff Paper  
14 Prepared for the Royal Commission  
15 on the Northern Environment by Ian  
16 S. Fraser, Director of Research,  
dated 1985, and it is entitled:  
Appendix 14.

17 MR. COLBORNE: Q. Now, maybe I will just  
18 repeat the question, Mr. Monzon.

19 The passage at page 50 of what has now  
20 been marked as Exhibit 35 is from a letter of the then  
21 Minister of Natural Resource, Alan Pope; is that  
22 correct?

23 MR. MONZON: A. That's correct.

24 Q. Is that letter in response to letters  
25 written by the Commissioner?

1                   A. Well, from the text at the top of the  
2 page, it would appear that way.

3                   Q. Very well. Sir, you may not have  
4 personal knowledge of that.

5                   MR. COLBORNE: Mr. Chairman, might I  
6 suggest - I don't think it is controversial - but just  
7 to put the documents in context, that I state that the  
8 passage on page 50 that I am referring to is from a  
9 letter that is in response to other letters.

10                  I am just saying that as an introduction  
11 to filing those other letters, so we can see the  
12 context of all of this.

13                  THE CHAIRMAN: You are going to file the  
14 other letters?

15                  MR. COLBORNE: I have them here.

16                  THE CHAIRMAN: Very well.

17                  MR. COLBORNE: These are Appendices 4,  
18 5, 6 and 7 of the Final Report of the Royal Commission  
19 on the Northern Environment.

20                  THE CHAIRMAN: Should we admit them all  
21 as Exhibit 36?

22                  MR. COLBORNE: That would be fine.

23                  THE CHAIRMAN: Very well. Exhibit 36  
24 will, therefore, be Appendices 3, 4, 5, 6 and 7 to  
25 Exhibit 33.



1       ---EXHIBIT NO. 36: Appendices 3, 4, 5, 6, and 7 to  
2                                   Exhibit 33.

3                   MR. MONZON: Excuse me, Mr. Colborne, do  
4       you want me to have a copy of that?

5                   MR. COLBORNE: Oh, I am sorry. I thought  
6       you had a copy of the entire Final Report and so I  
7       didn't give you a copy of that.

8                   MR. MONZON: No, I am sorry.

9                   MRS. KOVEN: You gave me three.

10                  MR. COLBORNE: Thank you. (Handed)

11                  MR. MONZON: Thank you.

12                  MR. FREIDIN: Mr. Chairman, I don't like  
13       to interrupt my friend during cross-examination, but I  
14       am unclear as to where all of this questioning is going  
15       to.

16                  Could I ask him whether he is making the  
17       submission indirectly here that the change from plan to  
18       guideline was done to essentially avoid the  
19       Environmental Assessment Act?

20                  Regardless of what the answer to that  
21       question is, the position of the Ministry is that these  
22       documents have a certain effect in your guideline.

23                  I mean, if the purpose of my friend's  
24       cross-examination is to indicate that, in law, they are  
25       something other than that, I would like to know that.



1 MR. COLBORNE: That's not my purpose.

2 MR. FREIDIN: I just don't know where  
3 this is all going to take us.

4 THE CHAIRMAN: Well, for instance, Mr.  
5 Freidin, is this not an area of some importance to the  
6 Board in being able to formulate its decision on the  
7 undertaking, for instance, in looking at the planning  
8 process in general?

9 It may be that the Board would come to a  
10 conclusion that these guidelines should have some more  
11 formal validity, for instance, so as to make them  
12 subject to other legislation, I don't know.

13 But is not this an area that the Board  
14 should be exploring in any event?

15 What you are saying is, is at a certain  
16 point in time the Ministry has taken a position on the  
17 validity or the characterization of certain  
18 documentation.

19 But aren't those documents that have been  
20 so characterized, in effect, directly or indirectly  
21 before this tribunal for review in terms of the overall  
22 process?

23 MR. FREIDIN: I think those documents are  
24 put before the Board as background information to set  
25 the context in which the decision-making in relation to

1 the undertaking is made.

2 A few days ago you made the comment -- or  
3 a comment was made that the Board is going to examine  
4 the undertaking as it is defined and may impose terms  
5 and conditions on how those specific activities should  
6 or shouldn't be carried out.

7 THE CHAIRMAN: But isn't the timber  
8 management plans in process, which is before the Board,  
9 to some extent dependent also on the overall planning  
10 process used by the Ministry to get down to the timber  
11 management plans?

12 MR. FREIDIN: I wouldn't say that it  
13 depends on them. I think --

14 THE CHAIRMAN: They are inter-related;  
15 are they not?

16 MR. FREIDIN: Pardon me?

17 THE CHAIRMAN: They are inter-related;  
18 are they not?

19 MR. FREIDIN: Their inter-relationship as  
20 discussed by the witnesses, yes.

21 THE CHAIRMAN: Certainly the guidelines,  
22 in both the regional context and the policy context  
23 above the regional level, will have some bearing on how  
24 the timber management plans are formulated?

25 MR. FREIDIN: And I think that is a

1 legitimate area of examination. I see that Mr.  
2 Colborne is doing something different than that, but  
3 maybe I am just...

4 THE CHAIRMAN: Well, I guess what we  
5 should ascertain at this point: I am not sure that the  
6 Board should not be looking at the overall planning  
7 context that the Ministry uses in order to formulate at  
8 the bottom end, if I can put it that way, the timber  
9 management plans that are specifically before the Board  
10 and that process leading to the development of a timber  
11 management plan.

12 Is that not what the Board is here to  
13 decide?

14 MR. FREIDIN: I don't think -- let me ask  
15 it this way. The Board is here to decide on whether  
16 the activities for which approval is sought are carried  
17 out in an environmentally sound way, and I...

18 THE CHAIRMAN: And those activities are  
19 embodied in the form of a timber management plan  
20 process?

21 MR. FREIDIN: For which a process has  
22 been described for developing those plans.

23 THE CHAIRMAN: Right.

24 And that process is, in part, developed  
25 through other planning processes or impacted upon, if I

1 can use that terminology, by other planning processes  
2 used by the Ministry?

3 MR. FREIDIN: Guidance is provided by the  
4 District Land Use Guidelines.

5 The evidence would be that the timber  
6 management plan can vary from the District Land Use  
7 Guidelines and there would be -- no reason or  
8 rationalization is provided for that.

9 So, in my submission, we are not  
10 reviewing the District Land Use Guidelines in this  
11 environmental assessment.

12 THE CHAIRMAN: Certainly not per se, but  
13 do you not have to look at, because you have done it by  
14 way of background, but is it not appropriate for the  
15 Board to look at the guidance that comes from above in  
16 the form, say, of District Land Use Guidelines that  
17 impact upon the formulation of timber management plans?

18 MR. FREIDIN: Yes. Yes, it is possible  
19 for the Board to examine that matter.

20 THE CHAIRMAN: And is this not what we  
21 are doing and what Mr. Colborne is doing indirectly in  
22 ascertaining the status, so to speak, of those District  
23 Land Use Guidelines?

24 MR. FREIDIN: I am not too sure that is  
25 why he is doing it.



1 THE CHAIRMAN: Well, your witnesses, Mr.  
2 Freidin, have spent considerable time in providing this  
3 planning background to the Board, leading off with how  
4 District Land Use Guidelines are formulated, what part  
5 they play in the Ministry's development of all its  
6 other planning mechanisms.

7 MR. FREIDIN: But if the witnesses - and  
8 I am not trying to stop the Board from looking at the  
9 inter-relationship by any stretch, I don't want that  
10 impression to be given.

11 But the witnesses have indicated what  
12 effects those District Land Use Guidelines can have or  
13 what the inter-relationship is between that and the  
14 decisions made at resource management planning levels,  
15 timber management plan.

16 That can be examined, but to have a  
17 cross-examination as to whether they should be regarded  
18 as something else by the Ministry, if that was the  
19 purpose -- that is why I got up in the first place.

20 THE CHAIRMAN: I didn't interpret that  
21 what Mr. Colborne is after is that they should be  
22 regarded as something else by the Ministry in light of  
23 the way the Minister of the day decided that they will  
24 be regarded.

25 I may be wrong, Mr. Colborne, but I did



1 not understand that that was where you were going.

2 MR. COLBORNE: No, it was not, Mr.  
3 Chairman.

4 MR. FREIDIN: Well, I will sit down. But  
5 I would still like some idea of where Mr. Colborne is  
6 going with this kind of questioning.

7 MR. COLBORNE: Mr. Chairman, maybe I have  
8 been making the error in the last half hour or so of  
9 trying to speed things up by not setting up my  
10 questions properly, merely because I don't think I am  
11 in a terribly important area.

12 But it takes a while to get through all  
13 the area, and maybe by taking some shortcuts I have, in  
14 fact, caused some consternation and lost what clarity  
15 there may otherwise have been.

16 All I am trying to get at is that this  
17 witness has now twice adopted as his testimony the  
18 views and statements of the Honourable Alan Pope in  
19 1983, and I simply want to demonstrate - in a way other  
20 than me trying to give evidence and in a way other than  
21 arguing at a much later time when it is no longer  
22 fresh - that those views of that then Minister were in  
23 fact examined and evaluated and rejected by the Royal  
24 Commission on the Northern Environment.

25 And if I am really off base on that, then

1 I will certainly hear what Mr. Freidin has to say.

2 But I would -- my own submission would be  
3 that, although it may not be central to the issue  
4 before the Board, that it is quite proper for the Board  
5 to look at and take into consideration the reports of a  
6 duly constituted recent Royal Commission in an area  
7 which is not the same, but similar.

8 THE CHAIRMAN: And quite properly, I  
9 think, because not only is the Fahlgreen Report before  
10 us, and I think should be before us, but so is the  
11 Baskerville Report--

12 MR. COLBORNE: Exactly.

13 THE CHAIRMAN: --which also has some  
14 problems in terms of what the Ministry has done in  
15 certain areas.

16 And those documents, I think, have to be  
17 before the Board and are before the Board.

18 I do not find, Mr. Freidin, anything  
19 wrong with him proceeding in a cross-examination to  
20 point out the contrasting opinions of both the Fahlgren  
21 view of what the Ministry's position is on the plans  
22 and what the Ministry's view was in connection with the  
23 same position.

24 MR. FREIDIN: Very well.

25 MR. COLBORNE: Q. Mr. Monzon, I think I

1 was just at the point where I was going to advise the  
2 Board that I had made a slight error in my introduction  
3 of Appendices 4, 5, 6 and 7 of the Report of the Royal  
4 Commission.

5 I had said and stated that it was not  
6 controversial that those appendices were the letters to  
7 which Mr. Pope's comments were responding. In fact,  
8 Exhibit 7 is something else.

9 Exhibit 7 is a letter to the Minister of  
10 the Environment and it has to do with a view that the  
11 Commissioner took of what Mr. Pope had already said.

12 MR. FREIDIN: Appendix 7?

13 MR. COLBORNE: Appendix 7, yes.

14 Q. So this batch that has been marked as  
15 Exhibit...

16 THE CHAIRMAN: 36.

17 MR. COLBORNE: Q. ...36 is documentation  
18 that both precedes and post-dates the statements of the  
19 Honorable Alan Pope which appear at page 50 of Appendix  
20 14 of Exhibit 35, and those are the statements that  
21 this witness adopted in earlier testimony.

22 Now, that is pretty roundabout, but that  
23 is mostly for the record because we have so much paper  
24 before us now.

25 Now, I would like to address a question

1 to the witness having gotten through all that.

2 Referring back again, Mr. Monzon, to the  
3 matters which appear at page 50 of Appendix 14 to the  
4 Report of the Royal Commission, I think you have  
5 already agreed that that is an excerpt from a letter--

6 MR. MONZON: A. Yes.

7 Q. --that Mr. Pope signed?

8 A. That's correct.

9 Q. And it is now on the record, I  
10 believe, that that letter is in response to certain  
11 letters.

12 Those letters are appendicies 4, 5 and 6  
13 which have now been filed as part of Exhibit 36.

14 Now, my point to you, Mr. Monzon, is: Do  
15 you agree or do you disagree that the Commissioner  
16 rejected, or at least raised very serious questions  
17 about what Mr. Pope had said.

18 And I refer you specifically to Appendix  
19 7 which is part of Exhibit 36, which is a letter of  
20 March 24th, 1983.

21 In other words, a letter that is later  
22 than Mr. Pope's letter and this letter is very lengthy,  
23 eight pages, addressed to the Minister of the  
24 Environment.

25 Is that your understanding of the

1 structure of the correspondence here?

2 A. Yes, certainly with respect to this  
3 particular letter, yes, this is a letter from Mr.  
4 Fahlgren to the Minister of the Environment.

5 Q. Now, if you turn to the third page of  
6 that letter, would you agree that Commissioner Fahlgren  
7 is, on this page, raising the question of whether Mr.  
8 Pope's position; that is, the position that you  
9 repeated and adopted as your testimony:

10 "...is a legalistic attempt to distance  
11 program implementation as far as possible  
12 from plan formulation and, if so, raising  
13 the spectre of arbitrary decision-making  
14 taking place outside the ambit of any  
15 formal planning or assessment process."

16 I have just --

17 MR. FREIDIN: Where are you reading from  
18 now?

19 THE CHAIRMAN: You are reading from page  
20 3 of the March 24th, 1983 letter?

21 MR. COLBORNE: Yes.

22 THE CHAIRMAN: From the Commissioner to  
23 the Honorable Keith Norton.

24 MR. FREIDIN: The location is...

25 MR. COLBORNE: It is the--



1 THE CHAIRMAN: Second paragraph.

2 MR. COLBORNE: --second paragraph.

3 Q. I should have given you the starting  
4 and finishing points.

5 The passage that I read begins as the  
6 second sentence in that paragraph and continues as the  
7 third sentence in that paragraph.

8 MR. MONZON: A. That is certainly what  
9 he has said there.

10 Q. And you have already said that that  
11 post-dates what Mr. Pope had written in his letter?

12 A. Yes.

13 Q. Now, today you referred me to what  
14 Mr. Pope said in evidence in April of 1983, which  
15 appears at pages 16 and 17 of Chapter 8 of the  
16 Commission Report which is filed as Exhibit 24; is that  
17 right.

18 A. That's correct.

19 Q. And that was in April?

20 A. Yes.

21 Q. Okay. Do you agree that following  
22 what Mr. Pope said before the Commission in April of  
23 that year, other evidence was heard formally before the  
24 Commission and some of which is set out as part of this  
25 document, Exhibit 24?

1 A. Yes.

2 Q. I mean, following -- I mean later in  
3 time?

4 A. Yes.

5 Q. And do you agree that the  
6 Commissioner's views, as stated at pages 19 and 20 of  
7 Exhibit 24 - the ones that I began asking you about  
8 earlier this morning - appear in this paragraph as the  
9 conclusions of the Minister following consideration of  
10 what Mr. Pope said, following consideration of what was  
11 said at later hearings?

12 A. I am sorry, the conclusions of Mr.  
13 Fahlgren...?

14 Q. The conclusions of Mr. Fahlgren.

15 A. Yes, I believe that's correct in  
16 terms of the time sequence, yes.

17 Q. Yes, just in terms of the time  
18 sequence.

19 So Mr. Fahlgren certainly had opportunity  
20 to consider Mr. Pope's position before reaching  
21 conclusions?

22 A. Oh, absolutely, and Mr. Fahlgren  
23 acknowledges on page 19 that he accepts that the  
24 Minister is legally within his jurisdiction in his  
25 designation and approval of the documents. He

1 recognizes there is disagreement, but he acknowledges  
2 the legal rights of the Minister.

3 Q. Are you aware that anybody had ever  
4 raised the question of whether the Minister was within  
5 his legal jurisdiction?

6 A. I am not aware that that question was  
7 ever raised.

8 Q. Now, just a few more points,  
9 hopefully fairly quickly, from this Exhibit 24, Chapter  
10 8 of the Final Report.

11 If you could look at page 5; that is,  
12 8-5, in the third paragraph Mr. Fahlgren says that MNR  
13 planning, and I am looking at the beginning -- the  
14 first sentence in that paragraph:

15 "MNR planning tends to be top/down."

16 If I understood your evidence earlier you  
17 said you disagree with that, or am I correct?

18 A. I am sorry?

19 Q. That would be the second sentence.

20 A. The second sentence?

21 Q. Yes.

22 A. No, I don't agree that it is  
23 generally a top/down process.

24 What I have been attempting to do is  
25 point out that in carrying out that top/down process it

1 is necessary to start at the bottom, relative to  
2 understanding potential and capability and demand and  
3 present use and all of that, and that is taken upwards  
4 and then back down through the system.

5 Q. The next sentence, that would be the  
6 third sentence in that paragraph contains the words:

7 "...the resource development bias that  
8 pervades the planning."

9 If I understand your previous testimony,  
10 I take it you don't agree that there is a resource  
11 development bias that pervades the planning of your  
12 Ministry?

13 A. I would not characterize it as a  
14 resource development bias. There is a balancing in  
15 terms of resource development and conservation and  
16 maintenance of environmental quality.

17 I can understand how one could arrive at  
18 the perception of -- and, therefore, lead to that term.

19 Q. How could one arrive at that  
20 perception; by what process?

21 A. Well, if you look, for example, at  
22 the major activity across northern Ontario, it is  
23 within the area of the undertaking, it is harvest  
24 activities -- harvesting and the associated activities  
25 that go on with that, and it is the major in terms

1 of -- if you want, it is the major activity that the  
2 Ministry is engaged in terms of size.

3 Q. This might go back to what we were  
4 discussing yesterday where way up in the far, far north  
5 you don't do very much.

6 A. I can't comment on the activities of  
7 the organization really along that coast, but certainly  
8 in terms of timber management there is not a lot of  
9 activity.

10 Q. Okay. Let's look then at the bottom  
11 of that same paragraph, the third paragraph on page  
12 8-5. There it is said that:

13 "The concerns of local people are to be  
14 taken into account -- "

15 No, excuse me".

16 "The extent to which the concerns of  
17 local people are to be taken into account  
18 is a matter of only equivocally  
19 addressed."

20 I think there may be a typographical or  
21 grammatical error there, but do you get the gist that  
22 seems to be implied here, that your Ministry's concern  
23 with listening to local people in terms of planning is  
24 equivocal?

25 I don't know exactly what he means in



1       that context, but do you agree?

2                   A. My presumption of what he is -- what  
3       he means by the term is that - and I will use a term  
4       that I believe you used I think yesterday - a tokenism,  
5       and I think he was implying or stating that the  
6       Ministry, in carrying out the land use planning  
7       exercise, did not listen to what people were saying and  
8       did not make changes in the Land Use Guidelines that  
9       people wanted.

10                   Certainly, that is what he was saying  
11       here. I guess I would have to look to the Land Use  
12       Guidelines to the appropriate section which indicates  
13       the, I believe in the documents, the sorts of  
14       expressions of concern that people came forward with.

15                   And I believe I stated earlier - and I  
16       won't go through it again - the changes that arose in  
17       the final document relative to the provincial parks  
18       system.

19                   THE CHAIRMAN: Mr. Colborne, it is now  
20       approaching one o'clock. I think we would like to  
21       break for the lunch hour shortly.

22                   Would this be a convenient time?

23                   MR. COLBORNE: This would be fine.

24                   THE CHAIRMAN: Very well. The Board will  
25       adjourn until 2:30 this afternoon.

1 Thank you.

2 ---Luncheon recess taken at 1:00 p.m.

3 ---Upon commencing at 2:35 p.m.

4 THE CHAIRMAN: Thank you.

5 Are you trying to intimidate us, Mr.  
6 Colborne, with this array of paper?

7 MR. COLBORNE: Oh, no, Mr. Chairman. All  
8 I have to say for myself--

9 MR. MARTEL: He is trying to keep the  
10 industry alive.

11 MR. COLBORNE: --is I copied them and  
12 enough for everybody, but I didn't write them.

13 I perhaps should also say that although I  
14 do intend to file one each of this mess of paper in  
15 front of me, I will not, with this panel, be spending  
16 much time with it.

17 I think it may be important to me later  
18 and, therefore, I think it should probably be  
19 identified by these witnesses.

20 THE CHAIRMAN: Very well.

21 MR. COLBORNE: Q. Mr. Monzon, I was  
22 looking -- may I proceed, Mr. Chairman?

23 THE CHAIRMAN: Yes.

24 MR. COLBORNE: Q. I was looking at  
25 Exhibit 24, do you still have it before you?

1 MR. MONZON: A. Yes, do I.

2 Q. I would like you to now look at page  
3 10 of that exhibit which would be numbered 8-10.

4 On this page the Commissioner recommends  
5 that the land use plans or guidelines will not be used  
6 for decision-making, and one of the reasons given is  
7 that alternatives were not examined.

8 I just want to ask you: How, within the  
9 Ministry's planning process, are alternatives  
10 generated; what's the procedure?

11 A. The procedure would be to look at  
12 various combinations of land and water to see how they  
13 could be best used to meet the objectives, and then you  
14 would evaluate those various uses of the land use --  
15 those configurations of uses on the land and water base  
16 to see which had the best mix and which generally led  
17 to the least amount of conflict, which were -- which  
18 one was most economical, which one was the most  
19 acceptable socially.

20 I believe there is a section in the 1980  
21 Land Use Guidelines that describe generally how that is  
22 done.

23 Q. Another reason given by the  
24 Commissioner was that there was too much discretionary  
25 power in the hands of politicians and senior

1       bureaucrats.

2                       The term senior bureaucrats would  
3       probably apply to yourself; do you agree that you have  
4       too much discretionary power?

5                       THE CHAIRMAN:  You are not trying to be  
6       insulting, are you?

7                       MR. COLBORNE:  Not my words, Mr.  
8       Chairman.

9                       Q.  Senior official, I don't mind  
10       changing the language, Mr. Monzon.  You are a senior  
11       official.  I am sure that's what the Commissioner had  
12       in mind.

13                      Do you feel ever or at all times, or  
14       whatever, that you have too much discretionary power?

15                      MR. MONZON:  A.  No, I think Mr. Fahlgren  
16       was looking at it in the context of accountability.  I  
17       am not sure what has led him to that conclusion.

18                      Do I feel that I have too much  
19       discretionary power?  I don't know how to give you an  
20       answer to that.

21                      Q.  Well, nobody else does.  You can't  
22       answer?

23                      A.  I would want to look at -- to  
24       understand the context within which Mr. Fahlgren was  
25       referring to discretionary power of the senior

1 bureaucrats.

2 Q. If I could refer you to the exact  
3 sentence, I am looking at the bottom of the last full  
4 paragraph on the page, that is the paragraph above the  
5 heading Public Participation in the Land Use Planning.  
6 The last sentence in the paragraph that I have just  
7 referred to reads as follows:

8 "Fourthly, the ambiguous status of the  
9 plan documents as a basis for  
10 decision-making about development  
11 continues to leave far too much  
12 discretionary power in the hands of  
13 politicians and senior bureaucrats with  
14 no more than a minimal level of public  
15 accountability."

16 So that expands it a little bit. The  
17 Commissioner is there talking about the ambiguous  
18 status of the plan documents as a basis for  
19 decision-making?

20 A. I guess the only way I can respond to  
21 that is to indicate, again, that the documents are  
22 meant as a basis for direction in terms of actions to  
23 be undertaken, they don't make decisions.

24 And if he is referring to the flexibility  
25 that is at the district level with the district



1 managers, he may feel that district managers have too  
2 much flexibility with respect to how these resources  
3 could be utilized and how resource management planning  
4 could be done.

5 Q. The ambiguous -- the term ambiguous,  
6 as it appears there, "ambiguous status of the plan  
7 documents", could I suggest that perhaps your local  
8 planners and decision-makers are being given a double  
9 contradictory message, that on the one hand they are  
10 being told: Follow the plans or make plans there in  
11 accordance with this; and on the other hand, they are  
12 told that their discretionary judgment is crucial to  
13 the planning process.

14 I have heard both of these theories from  
15 you and I would be pretty confused if I was sitting in  
16 an MNR district office as to whether I was supposed to  
17 follow the directive and guidelines - many of which  
18 have been referred to here - or whether I was to  
19 exercise my own judgment. Which is it or...?

20 A. I will try and restate it again. I  
21 mean, the planning documents, the land use guidelines  
22 give direction to the district manager and to the staff  
23 within that district.

24 They are not carved in stone, they are  
25 not documents -- the guidelines therein are not such

1       that there cannot be deviation from them.

2               Generally they provide a direction in  
3       which managers should be proceeding and they would  
4       attempt to identify a number of the resource management  
5       conflict issues that managers are going to have to deal  
6       with.

7               THE CHAIRMAN:  Mr. Monzon, do they not  
8       provide more than just direction in terms of process as  
9       opposed to the end result of the process, the decisions  
10      based on the process?

11              In other words, are you not saying to  
12      your district managers:  Here is the process you should  
13      be following set out in the guidelines.  As far as the  
14      specific conclusions that you reach following this  
15      process, that is a matter within your discretion based  
16      on the specific facts of the given case.

17              I mean, if they do not follow the  
18      guidelines in terms of the process, like consider these  
19      various things, take into account these things, they  
20      are really breaching corporate policy; are they not?

21              MR. MONZON:  Yes, they have to follow the  
22      guidelines that relate to the particular resource  
23      management plans that they are undertaking to prepare,  
24      yes.

25              THE CHAIRMAN:  Those directives have some

1 force and validity, vis-a-vis the district managers?

2 MR. MONZON: Yes. I am sorry, I was  
3 putting it in the context of the District Land Use  
4 Guidelines.

5 MR. COLBORNE: Q. At page 14 of this  
6 same exhibit, that's 8-14, we have a comment by the  
7 Commissioner about the obtaining of information from  
8 native people by your Ministry and its planning  
9 process.

10 And I am looking at the paragraph that  
11 commences on that page, ten lines down -- perhaps to be  
12 fair I should begin eight lines down and I will read  
13 the remainder of that paragraph to you:

14 "While the Ministry..."

15 That is the Ministry of Natural  
16 Resources:

17 "... would have undoubtedly taken into  
18 account any statements of native  
19 priorities that it would receive, it did  
20 not consider itself obliged to do more  
21 than solicit input. The Ministry's  
22 apparent position was that it could not  
23 reasonably extend the program to the  
24 active support of planning and consensus  
25 building in the native communities, for

1 to have done so would have been  
2 costly and time consuming. Moreover, the  
3 possibility exists that it would have  
4 facilitated expression of views that  
5 could only give it difficulty. Obviously  
6 the Ministry could discharge its  
7 subjectives, albeit much less  
8 satisfactorily, without native  
9 participation."

10 The comment there is in regard to land  
11 use planning and you were involved with that and in  
12 charge of that in the northwest region for some time  
13 and that time, I believe, included the years when the  
14 Royal Commission was active; is that not true?

15 A. Yes.

16 Q. So although I can't point you to a  
17 particular sentence in here that says that the  
18 Commissioner is talking about the area where you were  
19 working in the northwest, this examination did include  
20 the northwest.

21 So my question to you is: Does the  
22 passage from the Report that I have just read to you  
23 accurately reflect the Ministry's activities and views  
24 in terms of input from native communities in its land  
25 use planning process?

1                   A. Well, I don't -- I think one can get  
2 the impression by reading that statement that the  
3 Ministry never had any intention of listening to any of  
4 the views of the native people if, in fact, any of them  
5 came forward.

6                   Q. Where do you read that? What portion  
7 of the passage do you consider says that?

8                   A. "Obviously the Ministry could  
9 discharge its objectives, albeit much  
10 less satisfactorily without native  
11 participation."

12                  Q. I see. Okay.

13                  A. That's an interpretation that I would  
14 put on it.

15                   I would indicate that was never the  
16 intention of the Ministry in going through a planning  
17 exercise like this.

18                  Q. Yes, but doesn't it say in the first  
19 sentence that I read to you -- doesn't it agree that  
20 the Ministry did feel obliged to solicit input, that  
21 the Commissioner is definitely giving to your Minister?

22                  Q. Oh, yes, yes.

23                  Q. The Commissioner is saying that MNR  
24 did feel obliged to solicit input, but his problem is  
25 that it didn't go beyond that.



1 Is that not the way you read it?

2 A. Yes, all right, I would agree with  
3 that. I think he is also indicating -- well, I think  
4 there are reasons that it was -- there are reasons for  
5 the difficulty in trying to obtain input from the  
6 native people all along the process.

7 Q. Well, to get that input, would it  
8 have been - to use the words here - costly and time  
9 consuming?

10 A. Well, in this instance, or in any  
11 instance of getting input, it would be costly and time  
12 consuming.

13 Q. Was that one of the considerations of  
14 the Ministry in making its decision as to how much  
15 effort would be put into obtaining input from native  
16 communities, the cost and the time?

17 A. That's not my recollection.  
18 Certainly it -- as I recall, the Ministry, for example,  
19 extended the deadline on the West Patricia land use  
20 planning exercise from 1982 to 1983.

21 The issue of cost and obtaining native  
22 input was not one that was paramount in the minds of  
23 those of us who were involved in trying to get that  
24 input.

25 Certainly in the situation -- certainly

1 in respect to West Patricia, there were numerous  
2 translations made, there were tapes made, all of which  
3 are costly--

4 Q. Okay.

5 A. --and all of which were used. So I  
6 am trying to indicate that new things were attempted,  
7 cost was not a particular factor.

8 Q. What were the leading factors then?

9 A. I'm sorry, the leading factors in...?

10 Q. In the decisions made as to how much  
11 effort would be put into obtaining information and  
12 views from the native community?

13 A. Well, whether you are dealing with  
14 the native community or any public group, one can  
15 continue to go after opinion and to work hard to get  
16 that opinion.

17 If that opinion or comments are not  
18 forthcoming after repeated attempts, there is the point  
19 at which one has to determine whether or not the whole  
20 process is going to stop or whether in fact a decision  
21 will be made to proceed and to finish off an exercise.

22 Q. Are you confirming then that the  
23 Ministry did not consider itself obliged to do more  
24 than solicit input? Those are the words in the Report.

25 I thought I heard you just saying that

1       once you solicit and you solicit again, I guess you are  
2       saying, and you solicit a third time, if nothing comes  
3       in you can't put everything to a stop; is that what you  
4       just said?

5                   A. I am saying there comes a point in  
6       time in the process that you have to determine how many  
7       times you are going to go back and attempt to gather  
8       further input and further information, and if those  
9       people and those groups with whom you are dialoguing or  
10      attempting to dialogue are not prepared to participate  
11      or not participating for whatever reason, there comes a  
12      point in saying: Well, we either do it again or we  
13      continue with the process and complete the project.

14                  Q. Well, was there a decision not to -  
15      and I will read again from the same passage - "not to  
16      extend the program to the active support of planning  
17      and consensus building in the native communities"?

18                  A. The decision was not taken in that  
19      area. The decision was taken to complete the process.  
20      The decision was taken to complete the process  
21      recognizing that we would attempt to -- we would  
22      continue to attempt to solicit as much support and as  
23      much input and as much as involvement from all of  
24      public as we could.

25                  Q. Okay.

1 A. Including the native communities.

2 Q. So your decision was to carry on, the  
3 momentum was there, you wanted to finish the exercise  
4 you had commenced; is that your answer?

5 A. That is the decision of the Ministry,  
6 yes.

7 Q. You didn't decide do to what is  
8 suggested here because it would be -- I am sorry, you  
9 didn't decide not to do it because it would be too  
10 costly and time consuming, rather than make a negative  
11 decision, you made a positive decision just to go on in  
12 the direction that you were going.

13 Do I understand you correctly?

14 A. Yes.

15 Q. This also says that one of the  
16 reasons why you may have done what you did was because  
17 you didn't want to "facilitate expression of views that  
18 could give it difficulty", that's you, MNR?

19 A. Yes.

20 Q. Do you agree with that?

21 A. No, I would not agree with that.

22 Q. Don't you agree that in a lot of the  
23 planning exercise that your Ministry has engaged in in  
24 the north, to the extent that you have received any  
25 information from the native communities, it has been

1 not consistent with what you were intending to do, but  
2 in fact utterly contrary to what you were intending to  
3 do; is that not typical?

4 A. I think with respect to land use  
5 planning, your comment is probably accurate.

6 Certainly with respect to a number of  
7 specific projects that are undertaken by the Ministry,  
8 there is, if I can say, positive dialogue between the  
9 Ministry and a number of native communities.

10 Q. But insofar as general land use  
11 planning initiatives are concerned, would you agree  
12 that it is not convenient to the Ministry to have a  
13 large body, even if it is a body of Indians, a large  
14 body out there that is utterly imposed to what you are  
15 doing; that's inconvenient to your planning process,  
16 isn't it?

17 A. Well, part of the reason one is  
18 undertaking a planning process is to attempt to solve  
19 and minimize conflicts, and if there are problems or if  
20 there is an opposite expression of views, it is  
21 important, to the degree that it can be, that that  
22 expression of views be on the table for consideration.

23 THE CHAIRMAN: Mr. Monzon, what, in your  
24 opinion, is the basis of the conflict in terms of  
25 native communities?



1                   Is it a question of who owns the land or  
2                   is it a question of the activity that the Ministry  
3                   wants to carry out is not in accord with the way the  
4                   native communities would wish those activities to be  
5                   carried out?

6                   MR. MONZON: The perception, Mr.  
7                   Chairman, would be that - because I have been away from  
8                   this for some time - that the ownership of the land is  
9                   one issue, that the ownership of the resources, some of  
10                  the resources is another issue.

11                  THE CHAIRMAN: Not necessarily  
12                  disagreement over the way in which the Ministry -- if  
13                  the land ownership and the resource ownership questions  
14                  had been settled, it is your perception that they are  
15                  not necessarily disagreeing with the way the Ministry  
16                  would like to manage those resources, but there is a  
17                  fundamental disagreement as to whether the Ministry has  
18                  the right, if I might put it that way, to manage those  
19                  resources because of the ownership questions?

20                  MR. MONZON: Certainly there is --  
21                  certainly that.

22                  I think it is fair to say that there  
23                  would be a concern that the native people would have  
24                  with respect to the way that the Ministry wanted to  
25                  manage certain of the resources, particularly in the

1 areas close to native communities.

2 I am thinking in term of the benefits  
3 that might accrue to the native people but, obviously,  
4 the land ownership and ownership of resources are very  
5 key to the...

6 MR. COLBORNE: Q. Mr. Monzon, within the  
7 process carried out by the Royal Commission on the  
8 Northern Environment, more documents than just the  
9 Final Report were produced.

10 I have here a photocopy of a letter from  
11 the Honourable Alan Pope to Commissioner Fahlgren,  
12 dated March 9th, 1983, and attached to it are a number  
13 of pages with a cover page titled: MNR Response to  
14 Questions from the RCNE.

15 I don't know if you have even seen this  
16 before, but I will ask you now.

17 A. It is likely that I would have seen  
18 it. It does not come readily to mind.

19 Q. Perhaps Mr. Douglas may have some  
20 suggestion.

21 MR. DOUGLAS: A. I don't ever remember  
22 seeing that.

23 MR. COLBORNE: Perhaps Mr. Freidin can  
24 indicate that he will let me - I didn't have it typed  
25 up in my office - I believe that it is a copy of a

1 document that was forwarded by the Minister to the  
2 Commissioner.

3 MR. FREIDIN: I have no information to  
4 the contrary, so I would assume that the document is  
5 what it purports to be on its face.

6 THE CHAIRMAN: Well, we will admit it  
7 under that proviso, that it has not been a hundred per  
8 cent proven to be what it purports to be, but we will  
9 accept it on the basis that it is.

10 This will be Exhibit No. 37.

11 ---EXHIBIT NO. 37: Photocopy of a letter from the  
12 Honourable Alan Pope to  
13 Commissioner Fahlgren, dated March  
14 9th, 1983, and attached are a  
number of pages with a cover page  
titled: MNR Response to Questions  
from the RCNE.

15 MR. COLBORNE: Q. Sir, I only want to  
16 look at one section of this, although I copied the  
17 entire thing because it might be relevant to other  
18 matters that arise.

19 I would ask you to turn to page 15, these  
20 pages are numbered at the top.

21 MR. MONZON: A. Sorry, not mine.

22 Q. Are we on Ontario metric paper again?

23 A. I will count through here.

24 THE CHAIRMAN: You are starting with the  
25 cover page or are you starting with the first page of

1 the document entitled Nature and Status of Land Use  
2 Plans?

3 MR. COLBORNE: The page No. 1 has at the  
4 top Nature and Status of Land Use Plans.

5 THE CHAIRMAN: Thank you.

6 MR. COLBORNE: Q. The page that's  
7 numbered 15 is the one that commences or contains  
8 within it the commencement of a section titled VII,  
9 Public Input and Input Analysis.

10 Have you found that page, sir?

11 MR. MONZON: A. Okay, I have it.

12 MR. COLBORNE: Mr. Chairman, do you have  
13 that one?

14 THE CHAIRMAN: (Nodding affirmatively)

15 MR. COLBORNE: Q. In the paragraph  
16 immediately above that heading there is some discussion  
17 or elaboration by the Ministry of Natural Resources as  
18 to -- concerning the extent of participation by native  
19 people in regard to the West Patricia Land Use Plan,  
20 and more generally concerning the Ministry's land use  
21 planning program generally.

22 I would just like to go through that bit  
23 by bit, beginning with the second sentence that begins  
24 on the page at line 3:

25 "For reasons best known to themselves,

1 the native people have chosen to not  
2 become involved to the degree the  
3 Ministry had hoped. From the contact  
4 Ministry field staff have had with some  
5 Band members, their main concerns  
6 appeared to be related to the fear that  
7 proposed Ministry actions would constrain  
8 or prevent their pursuit from what they  
9 consider to be their traditional uses of  
10 an area and the possibility that Crown  
11 resources in the far north would not be  
12 set aside exclusively for native people."

13 That passage, to my reading, sir, it  
14 sounds somewhat similar to the testimony that you have  
15 just given.

16 Would you say that those two sentences  
17 that I have just read might be characterized as another  
18 way of expressing the testimony that you have already  
19 given just in the last few minutes, or at least part of  
20 the testimony you have already given?

21 MR. MONZON: A. Yes, they are related.  
22 Yes.

23 MRS. KOVEN: Excuse me, Mr. Colborne.  
24 According to your information, is the position taken by  
25 native people in this paragraph, the Ministry's



1 understanding of it only with respect to the West  
2 Patricia area, or is this a comment on the entire area  
3 of the undertaking?

4 MR. COLBORNE: My understanding is that  
5 the Ministry here is speaking about native involvement  
6 in the land use program generally, and that phrase that  
7 I have just stated appears at the bottom of page 14,  
8 and then the document goes on to refer to the West  
9 Patricia Land Use Plan.

10 So I think we are dealing with the views  
11 of the Ministry generally.

12 Q. Now, Mr. Monzon, continuing from  
13 where I left off in that same paragraph on page 15.

14  
15 The way I understand it, here we have  
16 what the the Ministry intends to do:

17 "The Ministry's plans have tended to  
18 recognize the continuance of the pursuit  
19 of traditional native uses in the areas  
20 where they are now being carried out  
21 especially in the far north. Should  
22 conflicts arise over continuance of these  
23 traditional native uses in the future  
24 they would have to be addressed on a  
25 site-specific basis."

1                   Is that different in any way, so far as  
2                   you know, from the current policy of the Ministry?

3                   A. I don't believe so. But, again, I am  
4                   not an expert in terms of the current policy that the  
5                   Ministry is following there.

6                   Q. Sir, do we have here, perhaps in this  
7                   paragraph, a very succinct statement of the problem  
8                   with, first of all, we could probably take out a lot of  
9                   the qualifying words.

10                  And the first two sentences that I read  
11                  are full of them, but the Indians on the one hand  
12                  saying: We don't want our traditional uses constrained  
13                  and we want exclusive rights, and the Ministry saying:  
14                  We will do what we can to prevent disruption of  
15                  traditional pursuits, but only where they are now being  
16                  carried out and silence on the question of any  
17                  exclusive rights.

18                  Do you have any -- do you take any  
19                  exception to that attempt of mine to summarize the  
20                  conflict that appears in this paragraph?

21                  A. You mean the conflict or the  
22                  substance of it?

23                  Q. The substance of the paragraph.

24                  A. Well, I think that is a fair  
25                  characterization.

1                   Q. But also the conflict itself. Not  
2 just the substance of the paragraph, but its truth and  
3 accuracy in terms of the actual conflict.

4                   A. I am sorry, what is the actual  
5 conflict?

6                   Q. Okay. I am suggesting to you that  
7 this paragraph expresses the actual conflict with the  
8 Indians saying: We want guarantees of our continued  
9 uses and we want certain exclusive rights; with MNR  
10 saying: The only thing we can do is try to prevent  
11 incursions on your existing uses as opposed to your  
12 traditional uses, and we have nothing to say about  
13 exclusive rights.

14                  A. I am not uncomfortable with what you  
15 are saying, Mr. Colborne, recognizing that the issue of  
16 the ownership of the lands and resources is one that is  
17 still outstanding.

18                  Whether or not that was raised by Mr.  
19 Fahlgren in his letter to Mr. Pope or not, I am not  
20 sure, so I am not sure if you want the total -- what  
21 this context is and what the total context is.

22                  Q. Well, okay. I wasn't attempting to  
23 relate the passage in this document that I have been  
24 referring to to any particular letter of Mr. Pope.

25                  My only reference to a letter of Mr. Pope

1 was that it is a covering letter that went with this  
2 package and, to my mind, it identifies the package,  
3 that is all.

4 A. Yes, I am sorry, I understand that.  
5 Just Mr. Fahlgren -- Mr. Pope is indicating this is his  
6 response to Mr. Fahlgren's questions in his letter of  
7 November, '82.

8 Q. Oh, I see.

9 A. That is my qualifier, I am sorry.

10 Q. Now, in comparison to what I have  
11 just looked at, the Ministry's statement at that time,  
12 1982 or '83 -- 1983 as to native input into land use  
13 planning, I would like to refer you to some passages in  
14 Exhibit 33.

15 MR. COLBORNE: And I have made extra  
16 copies, Mr. Chairman, of pages 10-7 through 10-9.

17 MR. FREIDIN: I was wondering, Mr.  
18 Chairman, whether the letter that this document,  
19 Exhibit 37, apparently is in response to is going to be  
20 made available to the parties.

21 THE CHAIRMAN: The actual letter to the  
22 Minister from the Commissioner to which this is a  
23 response?

24 MR. FREIDIN: Right.

25 MR. COLBORNE: I can look for it, but the

1 Ministry may be better equipped to find letters that it  
2 received, or which I believe it received than I.

3 The best I could find would be a copy.

4 THE CHAIRMAN: Well, that would really be  
5 in possession of the Ministry, would it not?

6 MR. FREIDIN: It would be, just that if  
7 this panel was going to deal with it or -- you know,  
8 Mr. Monzon says it is difficult to put things in  
9 context without having the letter.

10 I just thought that the witnesses might  
11 be more helpful if they had it while they were here,  
12 but we can attempt to find that letter.

13 THE CHAIRMAN: Well, I beleive, Mr.  
14 Colborne, you are saying that you do not have it at  
15 hand, is that what you are saying?

16 MR. COLBORNE: No, no.

17 MR. FREIDIN: We will deal with it in  
18 that circumstance.

19 MR. COLBORNE: (Handed)

20 THE CHAIRMAN: Thank you.

21 So, Mr. Colborne, we will mark this as  
22 Exhibit 38, which is an excerpt from Exhibit 33 being  
23 pages 10-7 to 10-9. My copy has two pages I believe of  
24 10-8.

25 MR. MONZON: As does mine, Mr. Chairman



1 MR. COLBORNE: It appears that all copies  
2 have two.

3 THE CHAIRMAN: So what it purports to be  
4 is a copy of pages 10-7, 10-8 and 10-9.

5 MR. COLBORNE: That's correct.

6 ---EXHIBIT NO. 38: Copy of excerpts of pages  
7 107, 10-8, and 10-9 from Exhibit  
8 No. 33.

9 MR. COLBORNE: Q. Now, Mr. Monzon, this  
10 is what Commissioner Fahlgreen had to say on the same  
11 topic in his Final Report.

12 He says - and I am beginning at the  
13 bottom of -- well, excuse me. Perhaps I will just  
14 indicate to you that in the middle of page 10-7, and I  
15 think that some of the highlighting from the original  
16 from which this was copied has come through, it has  
17 come through on my copy.

18 Can you see some highlighting in the  
19 middle of the page there?

20 MR. MONZON: A. Yes, yes I can.

21 Q. By indicating that, I won't have to  
22 read it to you. I hope that all copies have that.

23 If you could just take a glance at that.  
24 Do you agree, sir, that the Commissioner has here said  
25 again something similar to what he said on page 8-14  
that I referred you to before?

1                   He is once again saying that it appeared  
2                   to him or his conclusion was that your Ministry didn't  
3                   seem to want to do anything more than solicit input.

4                   A. That is essentially the same words.

5                   Q. Now, if we could go down a little  
6                   further on that page to the last paragraph here, the  
7                   Commissioner is saying that he heard from native  
8                   organizations, communities and individuals as to why  
9                   they refused to take part in the Ministry of Natural  
10                  Resources' land use planning or were reticent to do so  
11                  on an intensive or protracted basis.

12                  The treaty organizations and some other  
13                  native agencies regarded settlement of land claims,  
14                  Aboriginal rights and constitutional issues as  
15                  pre-conditions for their involvement, arguing that they  
16                  would be compromising their stance on these issues by  
17                  acknowledging the Ministry's jurisdiction over Crown  
18                  lands and its rights to plan for their use and to  
19                  manage them.

20                  Do you agree with that, did you ever run  
21                  into that?

22                  A. That sense of the problems that --  
23                  the sense of why the native people were not  
24                  participating, yes.

25                  Q. Did you ever run into that from

1 native people who said to you as a manager, a planner:  
2 I don't want to respond to you because as far as I am  
3 concerned you don't have jurisdiction to do what you  
4 are doing anyway?

5 A. I am trying to recall whether or not  
6 it was -- if it ever responded to me personally. There  
7 may be -- there may have been that occasion, I cannot  
8 recall it specifically.

9 Q. Okay, let's go onto next point. I am  
10 reading again from the last paragraph on page 10-7:

11 "Several native submitters pointed out  
12 that the Ministry's public participation  
13 procedures based as they mainly were on  
14 written documentation and calling, as  
15 they did, for rapid dissimulation of  
16 information and quick response times,  
17 were incompatible with traditional native  
18 ways of all communication, careful  
19 consideration and consensus building."

20 Did you ever in your work as manager,  
21 planner and so on, run into that type of response to  
22 your initiatives, where Indians were saying to you:  
23 You are moving too fast, you are doing it all in  
24 writing, you are not giving us a chance to meet,  
25 consider and decide what we want, this type of thing?

1                   A. Certainly we were aware that there  
2 were -- we were aware in the West Patricia exercise  
3 that the native groups were having problems with some  
4 of the -- well, with the technical documentation.

5                   Q. That is the next sentence, sir.

6                   A. Yes. I know we were looking for  
7 other ways to get information to them other than  
8 through simply sending a document; in other words, the  
9 written word.

10                  Q. Okay. So you are saying that some  
11 native people who you dealt with while you were  
12 actively involved in planning, did communicate to you  
13 that there was a problem with the technical content of  
14 what they received; is that it?

15                  A. The staff that I was involved with  
16 knew that from their interaction with some of the  
17 native people, and some of the staff that we had in the  
18 Sioux Lookout District - and I'm going back now - also  
19 I believe made that point in terms of the communication  
20 with the native people in the far north.

21                  Q. And they made the point to you, you  
22 received it directly within the chain of command of the  
23 Ministry; it is not something that you heard happened  
24 somewhere else, it was something that was part of your  
25 job to learn about; is that right?

1 A. Yes, that's correct.

2 Q. I would like to go back to the  
3 paragraph -- excuse me, the sentence before the  
4 sentence that deals with the information being too  
5 technical.

6 I asked you about the rapid dissimulation  
7 of information, the quick response times, this type of  
8 thing.

9 Did you ever hear of directly or  
10 experience personally any reaction to your planning  
11 procedures of that nature from native people or  
12 communities?

13 A. I cannot recall specifically.  
14 Certainly, again, with respect to West Patricia we made  
15 numerous attempts to contact the particular Bands and  
16 to set up sessions with them so we could come and talk  
17 to them.

18 Q. Just going on - I won't try to read  
19 everything - did you ever run into anything concerning  
20 your initiatives being too late or the information you  
21 provided being provided too late?

22 A. To be honest, Mr. Colborne, given the  
23 time, I cannot recall that specifically.

24 Q. What about the next point, and this  
25 would appear in the first full sentence at the top of



1 page 8:

2 "In some instances it appears that  
3 information sent to the Band office was  
4 simply stockpiled and never directed  
5 throughout the community."

6 Did you ever have knowledge of anything  
7 of that nature happening where materials that you sent  
8 to an Indian reserve community were not disseminated at  
9 all?

10 A. Again that strikes a chord. I could  
11 not quote you the community or communities in which  
12 that happened.

13 Q. Continuing to the next paragraph, the  
14 second sentence refers to:

15 "Some..."

16 That means some native people:

17 "...taking issue with the accuracy of  
18 your Ministry's data."

19 Did you ever run into that?

20 A. I didn't personally run into it. I  
21 would not be surprised that it happened, because a  
22 number of the staff out of Red Lake and Sioux Lookout  
23 had meetings with -- in Geraldton had meetings with  
24 individual Bands throughout the area.

25 So it could well be that there were

1 problems with our data, which was fine, that was one of  
2 the reasons that we wanted to meet with them.

3 Q. The next sentence deals with  
4 perception, at least one that the Commissioner thinks  
5 was out there: That your process was too  
6 sophisticated, too scientific, too quantified, so that  
7 native people didn't feel equipped to come back with an  
8 answer just because of the form that it was in.

9 Did you ever run into that or do you have  
10 knowledge of that?

11 A. I think that is probably -- well, I  
12 think it is probably correct, but I can't -- I would  
13 not be able to, again, indicate a specific as to where  
14 that information was made known.

15 Q. All right.

16 A. I mean, one of the things here is  
17 that when we were trying to talk to those people that  
18 certainly if - and this is part of the difficulty that  
19 we were having - is that, you know, if we could not  
20 obtain information in one form, we were certainly  
21 prepared to take it in another.

22 Q. Well, what if your biologist, for  
23 instance, said there was no fish in a lake and the  
24 Indian said there is lots of fish there and we want to  
25 catch them, who are you going to listen too, really?

1                   A. Well, I am not sure that -- with  
2                   respect, I am not sure that the black and white  
3                   situations like that exist too often.

4                   The point I am trying to make is that,  
5                   you know, if the techniques and the process was too  
6                   sophisticated - and this was a problem with  
7                   communicating to us in a written format - we were quite  
8                   prepared to take an oral communication from a Band  
9                   chief or an elder or whoever in terms of getting input  
10                  to the process.

11                 Q. So you were open to that if it came  
12                 in?

13                 A. Yes, yes.

14                 Q. The rest of this paragraph, as I read  
15                 it, refers to problems around the ability of the  
16                 Ministry to expend resources in its planning process.

17                 There is reference to limitless funds for  
18                 its inventorial and planning work, as opposed to the  
19                 lack of resources by, in this case, native communities,  
20                 but perhaps the principle applies to others as well.

21                 Have you received notice of problems or  
22                 complaints of that type that you have just got too much  
23                 power and resources, so there is no point trying to  
24                 stand up against you, it is like trying to fight city  
25                 hall type of thing?

1                   A. I can't recall a specific. I can  
2 understand that that could be easily the perception of  
3 the community.

4                   Q. Thank you. Those are my only  
5 questions on that Exhibit 38.

6                   I have no questions, Mr. Chairman, on my  
7 other page 8.

8                   THE CHAIRMAN: You are not going to go to  
9 page 9?

10                  MR. COLBORNE: No.

11                  Q. Mr. Monzon, just one last topic from  
12 the Report of the Royal Commission on the Northern  
13 Environment.

14                  I am now producing to you a photocopy of  
15 Chapter 2 of Exhibit 33. (Handed)

16                  THE CHAIRMAN: This will be Exhibit No.  
17 39, being Chapter 2 of Exhibit 33.

18                  ---EXHIBIT NO. 39: Chapter 2 of Exhibit No. 33

19                  MR. COLBORNE: Q. I will try not to read  
20 large sections of this to you, Mr. Monzon.

21                  Are you aware that the Commissioner  
22 recommended, and the phrase he uses is "resource use  
23 contracts", and he used in fact Forest Management  
24 Agreements as an example, "as a good method of resource  
25 management."

1 MR. MONZON: A. Yes, yes.

2 Q. Are you also aware that he  
3 recommended in this chapter, side by side with that  
4 contractual approach to dealing with resources an  
5 independent, and his words are:

6 "Northern Development Authority."

7 I am sure that the label doesn't matter,  
8 what matters is that it would have power to monitor  
9 compliance of the contractors. Are you aware of that  
10 without me having to read large portions of this?

11 A. I am aware of this recommendation  
12 regarding the authority, yes.

13 Q. Yes. I don't intend to get into the  
14 specific language he used to describe it or the  
15 details, so perhaps we could just leave it at that.

16 I just want to ask you questions about  
17 the concept.

18 Now, the concept is, as I understand it:  
19 This Northern Development Authority would be created by  
20 statute, and it would have the power to examine whether  
21 these resource use contracts were being carried out  
22 properly or not.

23 My question to you is: Does the Ministry  
24 have in consideration, or has it ever had in  
25 consideration recommending or agreeing to this type of



1 independent agency that might take some part of its  
2 decision-making responsibility off its hands?

3 A. Have we agreed to it?

4 Q. Or even have it under consideration  
5 as something that the Ministry would recommend?

6 A. I don't believe, in terms of the  
7 Northern Development Authority described by Mr.  
8 Fahlgren, that the Ministry has developed a position on  
9 that.

10 Q. Okay. My question was a little  
11 broader than that. I assume that when and if there is  
12 an answer from the Government of Ontario on that  
13 specific recommendation of the Commissioner, and if it  
14 comes during the time when this Board is sitting, we  
15 will know about it.

16 I am asking you more broadly: Have you  
17 had in consideration any recommendations which would in  
18 effect -- in effect, devolve some of your  
19 decision-making authority to somebody else?

20 A. No, not that type of decision-making  
21 authority. If I understand you, Mr. Colborne, the  
22 decision-making authority which you refer is that of  
23 the Minister, and there is not a consideration that I  
24 am aware of at this time to pass that to someone other  
25 than the Minister.

1 Q. No, branches of government don't  
2 usually give consideration to hand over sections of  
3 their own jurisdiction to somebody else, but I am  
4 asking the question anyway, because so many people,  
5 including the Commissioner, have said that your  
6 Ministry has too much power.

7 So it occurred to me that possibly  
8 internally you had looked at some way of splitting up  
9 some of the decision-making power that you have and  
10 putting it in some other hands.

11 So your answer is, as far as you know,  
12 this is not in development or consideration within your  
13 Ministry?

14 A. As far as I know.

15 Q. Does your Ministry have -- no, I  
16 don't have to answer that question.

17 Sir, those are my questions on the Royal  
18 Commission Report and the conduct of the Royal  
19 Commission.

20 I now have a few, hopefully, questions on  
21 the the Review of the Class EA, the document filed as  
22 Exhibit 5 and I believe 5A. Do you have those?

23 MR. MONZON: A. Yes, Mr. Douglas has  
24 them.

25 Q. Fine, I will ask these questions of

1 Mr. Douglas.

2 Mr. Douglas, I have a concern in these  
3 two documents, Exhibits 5 and 5A, only with the points  
4 where questions of Indian rights arise.

5 And if I follow the document through  
6 correctly, I begin with Exhibit 5 and turn to page  
7 86 -- excuse me. Yes, 86.

8 No, actually perhaps we should go in  
9 order and begin at page 77.

10 At page 77, if I read this correctly, we  
11 have a summary of the response to the Ministry of the  
12 Environment's enquiries from the Ministry of the  
13 Attorney General.

14 Is that what we find on these two pages,  
15 Mr. Douglas, 77 and 78?

16 MR. DOUGLAS: A. Under Section 4(1) we  
17 have comments from Ministry of Attorney General, Office  
18 of Native Affairs Directorate.

19 Q. And does this paragraph on page 77  
20 under the heading: Comment on Amending Class EA. Does  
21 this just represent a summary of what one would find  
22 the substance of elsewhere?

23 A. I believe these are summaries. The  
24 actual correspondence is in the appendices to this  
25 document.

1 Q. Right, right. And so page 78  
2 summarizes your Ministry's response, is that the way  
3 this document is structured?

4 A. Just let me check. I believe so,  
5 yes.

6 Q. And then on page 86, do we have the  
7 same thing with respect to Indian and Northern Affairs  
8 Canada; in other words; a summary of the comments made  
9 by that department and a summary of your Ministry's  
10 responses?

11 A. To find the actual comments and the  
12 actual responses if go to the appendix, yes, certainly.

13 Q. Thank you. Sir, if I now turn to  
14 page 109, I am into the appendices and these are the  
15 original documents on which the summaries are based; is  
16 that right?

17 A. Yes.

18 Q. Now, I said 109, I think I should  
19 have said 107.

20 Beginning at page 107 and continuing  
21 through to page 110, does that represent some of the  
22 correspondence received by your Ministry from the  
23 Ministry of the Attorney General in regard to this  
24 Class EA?

25 A. Yes, it does, both versions. The

1 original '85 document and the subsequent June, '87  
2 document.

3 Q. Yes. I say some because, if I am not  
4 mistaken, on a day that I did not attend, the Board was  
5 advised that there is one additional letter, but it  
6 wasn't filed because there was some contention as to  
7 what it meant.

8 Is that your understanding?

9 A. Yes.

10 Q. But you yourself have seen that  
11 document, the one that was not filed?

12 A. Yes, I have.

13 Q. Now, Mr. Hunter went through these  
14 pages 107 through 110 with you to a certain extent. He  
15 asked you why the 'C' change between '86 and '87 and so  
16 on and so forth, I won't ask you that question.

17 He did refer to the document at page  
18 109 -- that begins at page 109 and referred to the  
19 material toward the end of the last paragraph on page  
20 109; that is, the first paragraph of the September  
21 14th, 1987, letter.

22 A. Mm-hmm.

23 Q. And he asked you, I believe - and I  
24 have no transcript and my recollection isn't -- may be  
25 worse than anybody's - but he did ask you, did he not,



1 to confirm that there was certain matters of importance  
2 raised in this September 14th, 1987, letter?

3 A. Yes.

4 Q. Of importance to the Ontario Native  
5 Affairs Directorate?

6 A. Yes.

7 Q. Okay. So these matters were raised.  
8 Now, am I correct that if we go all the  
9 way forward to page 242 we find your Ministry's  
10 responses?

11 A. What was on 242 to 245 was our  
12 response back to Mr. Krasnick indicating the types of  
13 commitments we made and the type of evidence that we  
14 will be preparing for this hearing.

15 Q. Right. And your response was a  
16 response to his letter of September 14th, 1987; is that  
17 correct?

18 A. Yes, it is.

19 Q. Was it a response to anything else?

20 A. No.

21 Q. Actually, sir, I am not intending a  
22 trick question or anything, because I am going to get  
23 to the questions raised by the Department of Indian  
24 Affairs in a moment.

25 It seems to me you are saying that the

1 memorandum from Mr. Krasnick at page 242 and following,  
2 is a response not only to him, but also to the concerns  
3 raised by the Department of Indian Affairs?

4 A. Yes. We dealt with Mr. Krasnick as  
5 being the Ontario office dealing with native affairs.

6 Q. Okay. But didn't you have objections  
7 also from the Department of Indian Affairs -- Indian &  
8 Northern Affairs, the federal department, and don't we  
9 find these at page 220 of Exhibit 5, at least they  
10 commence at page 220?

11 A. Yes, those refer to a letter of  
12 September 29, 1986.

13 Q. That letter of September 29th, 1986,  
14 had attached to it a number of other documents, I  
15 believe. If you just want to glance through pages 220  
16 through 237 and tell me if you agree with what I have  
17 just said?

18 A. Yes, this is material that the  
19 federal department provided.

20 Q. Okay. Now, if you look at page 261 -  
21 I hope to be able to tie all this together in a  
22 minute - but if you look at 261, this is a copy of your  
23 memo?

24 A. I am sorry, my pages are blurred,  
25 page numbers. I believe I have it. The letter of the

1 3rd of December to Mr. Hatfield?

2 Q. Yes?

3 A. Yes.

4 Q. That's yours?

5 A. Yes.

6 Q. Could you read that? You don't have  
7 to read it aloud, I just want you, in a moment, to  
8 confirm what I think it is.

9 My question is: Are you saying to Mr.  
10 Hatfield that your memo to Mr. Krasnick - that's the  
11 one that appears at page 242 to page 245 - should also  
12 be taken by Mr. Hatfield as an answer to the Department  
13 of Indian Affairs' queries as well as an answer to the  
14 Office of the Ontario Native Affairs Directorate's  
15 queries?

16 A. Yes. The final paragraph says:  
17 "In providing this response, we believe  
18 that we have satisfied the relative  
19 concerns that you have expressed," you  
20 being Indian & Northern Affairs, Canada.

21 Q. Right. Now, would you agree with me  
22 that in the concerns expressed by Indian & Northern  
23 Affairs Canada there appear numerous references to  
24 treaty rights, including the fact that they are  
25 constitutionally protected?

1                   A. Yes, I believe one of their  
2                   attachments indicates the material that they have  
3                   provided on that topic.

4                   Q. Yes. In fact they even provided you  
5                   with a photocopy--

6                   A. Yes.

7                   Q. --of a portion of the Constitution of  
8                   Canada--

9                   A. Right.

10                  Q. --the Constitution Act; did they not?

11                  A. Yes.

12                  Q. Thank you. Where would I look in  
13                  your memorandum to Mr. Krasnick to find out what MNR's  
14                  position is on these treaty right questions and even  
15                  the constitutional question raised by Indian & Northern  
16                  Affairs Canada?

17                  A. Which correspondence are you  
18                  referring to, please?

19                  Q. My understanding is if we look at  
20                  your memorandum to Mr. Kraknick, that appears at page  
21                  242, we find answers, or at least we find your  
22                  Ministry's responses, not just to Mr. Krasnick, but  
23                  also to the federal department and my question to you  
24                  is: The federal department has raised treaty rights,  
25                  constitutional rights, issues, but I fail to see these

1 addressed directly in the memorandum to Mr. Krasnick?

2 A. Well, we say in the second paragraph  
3 on page 7 of the Environmental Assessment Document --  
4 there is a statement in terms of the fact that there  
5 are issues related to treaty rights and to aboriginal  
6 rights which we recognize.

7 Q. Okay. Well, let's just go there  
8 then, page 7 of the Class EA Document, lines 14 through  
9 to 35.

10 Those are paragraphs added to an earlier  
11 draft in response to the review that was carried on; is  
12 that right?

13 A. Yes.

14 Q. I am looking at the second of those  
15 two added paragraphs and I am looking at the first  
16 sentence of that second paragraph, the one that begins  
17 at line 25. It says:

18 "Since some of these very basic issues  
19 are as yet unresolved, it is not possible  
20 to define and assess the potential  
21 impacts of timber management activities  
22 on aboriginal or treaty rights in this  
23 class environment assessment."

24 Does that mean that we won't be hearing  
25 about them? Does that mean that the Ministry has



1       decided what can or cannot be assessed here? What does  
2       that mean?

3                   A. It is a basic statement that the  
4       question of aboriginal rights is something that is  
5       being discussed among the Government of Canada, the  
6       Provinces and the First Nations, and there is no  
7       resolution as of yet. We don't know what aboriginal  
8       rights mean.

9                   Q. Well, are you the one who is giving  
10      the evidence as to whether in fact it is even being  
11      discussed?

12                  A. The particular evidence in respect to  
13      background to these two paragraphs, or these three  
14      paragraphs, would be part of the evidence package of  
15      No. 6.

16                  Q. That was my understanding.

17                  So you're telling us that we will be  
18      hearing evidence to the effect that these topics are  
19      being discussed, but are not yet resolved and,  
20      therefore, this assessment should just continue because  
21      they are not resolved and you can't put a stop to  
22      everything because there is something out there that's  
23      not resolved; is that what you are telling me?

24                  A. Well, when something is not resolved,  
25      it is very difficult to know what the universe of items

1 is that need to be considered.

2 Q. Right. But might it be relevant why  
3 these questions are not resolved? Might it be relevant  
4 whether they are resolvable or not? Might it be  
5 relevant that the proponent is the reason why they are  
6 not resolved?

7 A. Well, certainly, we are not the  
8 provincial Ministry with the responsibility, from the  
9 province's point of view, to participate in those  
10 aboriginal rights, discussions and --

11 Q. You aren't as of January of this  
12 year.

13 I will ask you: Did you; that is, your  
14 Ministry, shut down your office of Indian Resource  
15 Policy so that they would not be subject to examination  
16 before this hearing?

17 A. Of course not. The lead role for  
18 negotiations with the Federal Government and the native  
19 people on these issues has been with the Office of  
20 Indian and -- ONNAD, Ontario Native Affairs Directorate  
21 for a number of years.

22 Q. How many?

23 A. The lead role on the constitution, I  
24 can't quote, but it goes back probably five or seven  
25 years. It was in a different location prior to 1985.

1 It was the Office of Provincial Secretariat for  
2 Resources Development.

3 Q. That's right. But now you have  
4 nobody within your Ministry that deals with that in  
5 terms of the types of process you are talking about  
6 now, the negotiations involving the Federal Government  
7 and so on?

8 A. The lead role is with the Office of  
9 Native Affairs Directorate. They would seek our input  
10 from time to time.

11 Q. So your Office of Indian Resource  
12 Policy is gone.

13 If I understood Mr. Monzon this morning,  
14 your negotiator, that's the -- looking at the  
15 organizational chart filed as page 249 of the evidence  
16 of this panel, the Special Negotiator Native Issues, is  
17 gone too?

18 A. As a separate position in that chart,  
19 yes.

20 Q. Would you agree with me that both the  
21 Special Negotiator Native Issues, and the Office of  
22 Indian Resource Policy is still in the Government of  
23 Ontario phone directory of February, 1988?

24 A. Yes, and that phone directory is six  
25 months' out of date and it will probably be a year out

1 of date before it gets revised.

2 Q. Okay.

3 A. Past history is a good lead.

4 THE CHAIRMAN: Mr. Colborne, I used to  
5 say at one time when discussing what this Board might  
6 be authorized to hear in terms of evidence, that under  
7 Section 15 of the Statutory Powers and Procedure Act we  
8 can admit almost anything, including even a telephone  
9 book if we found it relevant.

10 And I am surprised to see in this hearing  
11 twice so far people have sought to have the telephone  
12 book admitted.

13 MR. FREIDIN: It must have been the  
14 Thunder Bay book.

15 THE CHAIRMAN: I was referring to a Bell  
16 Telephone book, not the Government Directory, but...

17 MR. COLBORNE: Mr. Chairman, somebody  
18 sought to have it admitted, you admitted it, Exhibit  
19 15.

20 THE CHAIRMAN: That's true.

21 I suppose to some extent it is relevant,  
22 but I am not sure how up-to-date it is.

23 MR. COLBORNE: Q. Mr. Douglas, at risk  
24 of repeating myself, just so I am clear on what your  
25 answer is, I asked you why, if I look at the memorandum

1 to Mr. Krasnick that we find at page 242, and try to  
2 find in it answers to the treaty rights, constitutional  
3 rights questions and so on raised by the Department of  
4 Indian Affairs, I can't find it because the position of  
5 the Ministry is that those matters are not defined and  
6 so, therefore, how can they be assessed or how can they  
7 be part of an assessment; is that right?

8 MR. DOUGLAS: A. In the general case,  
9 yes.

10 For aboriginal rights, that's certainly  
11 the case. In terms of the treaty rights, I think they  
12 are identified on page 7 that there is some variation  
13 from area to area as well, depending on which treaty  
14 you are looking at.

15 But, again, I am not familiar with the  
16 differences from treaty to treaty and I understand -  
17 although I don't understand the details - that there is  
18 some discussion of how you interpret the words in  
19 individual treaties.

20 Q. Thank you.

21 I have a few questions for Mr. Monzon on  
22 SLUPS and DLUGS and I want to start with the Strategic  
23 Land Use Plan, that will be Exhibit 9, that's the  
24 Northwestern Ontario Plan.

25 I do have a number of questions about



1 contents of this plan insofar as they relate to native  
2 rights and native issues.

3 I am not directing those to you, Mr.  
4 Monzon, I just want you to clarify a few things about  
5 this type of document, the Strategic Land Use Plan in  
6 relation to planning. Do you have your copy before  
7 you?

8 MR. MONZON: A. Yes, I do.

9 Q. Can you turn to page 58, the last  
10 sentence on that page.

11 MR. COLBORNE: Mr. Chairman, some of the  
12 parties may have a hard time putting their hands on  
13 Exhibit 9. I am just going to be referring to some  
14 very short passages. I will read them.

15 THE CHAIRMAN: Very well.

16 MR. COLBORNE: Q. The last sentence on  
17 that page says:

18 "The approved District Land Use Plan will  
19 then provide for the district overall  
20 guidance for the operation of the  
21 resource management programs of the  
22 Ministry of Natural Resources. "

23 That means, I take it, that once the  
24 District Land Use Plan, now called guideline, is  
25 completed, then that will be used by the district

1 people in the way described here and in the way that  
2 you have described by way of expansion on this theme;  
3 is that correct?

4 A. Yes, that's correct.

5 Q. If you go forward to page 62, the  
6 first sentence on that page reads:

7 "This document..." that is the Strategic  
8 Land Use Plan "...will guide the Ministry of Natural  
9 Resources' programs to the year 2000."

10 The next sentence says:

11 "As such, subsequent land use plans and  
12 resource management plans of the Ministry  
13 in northwestern Ontario will conform to  
14 this plan."

15 The term "will" is a very powerful one in  
16 any context.

17 Does this not say to the people who are  
18 preparing your District Land Use Guidelines that they  
19 must abide by what they find in the Strategic Land Use  
20 Plan?

21 A. Well, the same -- certainly the  
22 policies and the targets contained in the Strategic  
23 Land Use Plan are to be used in the District Land Use  
24 Guidelines, yes.

25 Q. Is there anything here under the

1 heading Implementation, that is also on page 2, which  
2 directs the district people to the fact that they can  
3 depart from what's in the Strategic Land Use Plan when  
4 they wish to, or when they think it's proper, or  
5 however you want to describe it?

6 A. There is nothing in this section.

7 Q. I think I am probably repeating a  
8 question I asked this morning, then.

9 Where would that district officer of your  
10 Ministry look to get the authority to depart from the  
11 Strategic Land Use Plan?

12 A. To depart farther from the strategic  
13 or to depart from the district?

14 Q. In preparing district plans, and I am  
15 sure in administering district plans, those must  
16 confirm with the strategic plan. That's my  
17 understanding of what this says, there is a mandatory  
18 direction here?

19 A. Yes.

20 Q. And my question is: My understanding  
21 of the general tenure of your evidence has been that  
22 there is discretion at the local level?

23 A. At the local level in terms of the  
24 way that those guidelines are used and the carrying out  
25 of specific resource management plans, yes.

1 Q. Well, maybe I am getting a little too  
2 picky or technical here, but when I look at the tables,  
3 for instance, the tables that appear on page 59, 60,  
4 61, we don't have ranges there or anything, we have  
5 numbers, very specific numbers: Moose, 396; commercial  
6 fur beaver, 7,974.

7 Are you saying that the district people  
8 have discretion sort of within the totals given to  
9 them; like, if it says 7,994 beaver and that district  
10 manager is managing or administering 40 or 80 traplines  
11 or whatever, does that mean his discretion only extends  
12 to reallocation among the trappers, or does that mean  
13 that he can say to himself: Well, the latest data that  
14 I have got is that this is a bumper year for beaver and  
15 we can go up to 9,000?

16 A. The district manager has the  
17 flexibility to use whatever new information - whether  
18 it would it be inventory or whatever - that comes to  
19 his or her attention in managing the resource.

20 As I think I have attempted to indicate  
21 earlier, the numbers that are presented here are passed  
22 on to the district - we have used the term assigned -  
23 and become the benchmark by which one measures the  
24 results by which, or through which the district is  
25 carrying out activities.

1                   They provide a -- well, benchmark is the  
2 term for work and activity to be measured against.

3                   Q. Well, benchmark, is that optimum or  
4 maximum?

5                   A. It is the mark against -- the number  
6 against which activities would be measured against.

7                   But because, for example, moose comes out  
8 to 396, as I think I indicated earlier, the number 396  
9 is not carved in stone in terms of its specif - I will  
10 never say the word - in terms of how specific it is.

11                   What we are talking to there is the --  
12 what we are looking at there is how the district, for  
13 example, at Atikokan is doing relative to the moose  
14 population which should be in the order of some 400.

15                   Now, whether that number is 350 or 420 is  
16 subject to the particular situation within the  
17 district, and if there are new information -- or if  
18 there is new information that would change the  
19 benchmark number, then that should be incorporated into  
20 the documents at some point in time.

21                   Q. I hear you, sir, and I think I  
22 understand you, but if that's the case, don't you think  
23 that maybe the Strategic Land Use Plan itself is badly  
24 phrased and maybe somewhat misleading to people?

25                   A. Mr. Colborne, if we were doing it



1 again I would suggest that we move the number from 396  
2 to 400 and round those sorts of things off, but there  
3 is a little -- a degree of preciseness there that is  
4 not warranted.

5 I think I can accept -- I think we can  
6 accept the criticism in terms of the phraseology of  
7 this document and other documents but, again, I think  
8 one has to recognize that, you know, this is the first  
9 time this has ever been done on anything like this  
10 scale.

11 Q. In Ontario?

12 A. Well, just about anywhere else, and  
13 it may be a -- may not be a totally perfect system, but  
14 it has gone a long way to help us determine where --

15 Q. My question -- I am sure there are a  
16 lot of people paid to tell us how wonderful your  
17 planning process is.

18 My question was only: Do you think  
19 possibly it should have been rephrased in a different  
20 way? Do I take it your answer is yes?

21 A. I think you could always look to make  
22 improvements in this sort of thing.

23 Q. Now, one more question about that  
24 page. It says that it will be reviewed every five  
25 years. I don't think anybody has asked you, this thing

1 is dated 1982, five years from 1982 is 1985?

2 A. 1987.

3 Q. 1987. I am a lawyer, not a  
4 mathematician.

5 A. You got that from me, Mr. Colborne.

6 Q. On page 62 it says "we will review  
7 every five years." Was it, in fact, reviewed in 1987?

8 A. No, it has not been reviewed. We  
9 have been attempting to concentrate our efforts on  
10 developing a proper review procedure for the District  
11 Land Use Guidelines and that process is in fact  
12 underway.

13 Q. Okay. Now, sir, this --

14 THE CHAIRMAN: Mr. Colborne, might this  
15 be a good time for a mid-afternoon break?

16 MR. COLBORNE: Yes.

17 THE CHAIRMAN: Okay. The Board will rise  
18 for 20 minutes.

19 Can you give us an indication of where  
20 your examination is going after we return, in terms of  
21 time?

22 MR. COLBORNE: I will be completed within  
23 an hour of when we reconvene.

24 THE CHAIRMAN: That means sitting until  
25 almost 5:30, that's if you are accurate.

1 MR. COLBORNE: I may be able to save some  
2 time by walking around with these documents which are  
3 basically going to be merely identified by these  
4 witnesses during the break.

5 MR. MONZON: We will keep our answers  
6 very precise, Mr. Chairman.

7 THE CHAIRMAN: We do not want to  
8 constrain your cross-examination in any way, but it had  
9 been the Board's intention, frankly, to rise about 5:00  
10 today because, according to my calculations, we will  
11 put in almost -- very close to six hours, five and a  
12 half to six hours' worth of testimony, which I think is  
13 a lot for everybody to absorb in one day, and we  
14 started at 9:30 today.

15 Would that pose any problem for you  
16 returning, if necessary, tomorrow morning to complete  
17 your examination?

18 MR. COLBORNE: No, it won't.

19 THE CHAIRMAN: Very well.

20 We will return 20 minutes from now.

21 ---Recess taken at 4:05 p.m.

22 ---Upon resuming at 4:25 p.m.

23 THE CHAIRMAN: Thank you, ladies and  
24 gentlemen. Please be seated.

25 MR. MARTEL: Are we supposed to read all

1 of this tonight?

2 MR. COLBORNE: Hopefully you won't have  
3 to read all of that ever, sir.

4 MR. COLBORNE: Before I get back to the  
5 stacks of documents that I distributed during the  
6 break, I have a couple that I want to deal with  
7 separately because they are of a slightly different  
8 type.

9 Q. Mr. Monzon, we have been talking  
10 about the Strategic Land Use Plan for Northwestern  
11 Ontario and you have said that the planning process  
12 begins, or at least part of the earlier stages of the  
13 process is a compilation of background information?

14 MR. MONZON: A. That's correct.

15 Q. I am showing you a document entitled  
16 Background Information and Approach to the Northwest.  
17 Is that the Background Information Document which is  
18 part of the train of planning events which led to the  
19 Strategic Land Use Plan for Northwestern Ontario?

20 A. Yes, that's correct.

21 MR. COLBORNE: May this be an exhibit?

22 THE CHAIRMAN: Exhibit 40, entitled:  
23 Background Information and Approach to Policy  
24 Northwestern Ontario Planning Region. It is in two  
25 editions, dated December, '74 and November, '74.

1 Is this the same document, Mr. Colborne?

2 MR. COLBORNE: Yes.

3 THE CHAIRMAN: Is this both editions?

4 MR. COLBORNE: That is an interesting  
5 question. I don't know why it is dated that way, it is  
6 only one document.

7 MR. MONZON: I think, Mr. Chairman, this  
8 was a reprint of the document.

9 THE CHAIRMAN: Oh, but it is essentially  
10 the same document?

11 MR. MONZON: I believe so, yes.

12 THE CHAIRMAN: All right. We will refer  
13 to it in the record as that dated September, 1974.

14 ---EXHIBIT NO. 40: Document entitled: Background  
15 Information and Approach to Policy  
16 Northwestern Ontario Planning  
Region, dated September, 1974.

17 MR. COLBORNE: Q. And one more related  
18 document. I am showing you something, Mr. Monzon,  
19 entitled: Proposed Policy Northwestern Ontario  
20 Planning Region, dated September, 1977.

21 Is this another document that is in the  
22 train of planning process that culminates in the  
23 Strategic Land Use Planning for Northwestern Ontario?

24 MR. MONZON: A. That's correct.

25 THE CHAIRMAN: Exhibit 41.



1 MR. COLBORNE: (Handed)

2 ---EXHIBIT NO. 41: Document entitled: Proposed Policy  
3 Northwestern Ontario Planning  
Region, dated September, 1977.

4 MR. COLBORNE: Q. And am I correct that  
5 there is one more publicly published document that  
6 falls inbetween Exhibit 41 and the Northwestern Ontario  
7 Strategic Land Use Plan, and that one would be  
8 entitled: Draft Strategic Land Use Plan in June of  
9 1980.

10 Is that right?

11 MR. MONZON: A. Yes.

12 MR. COLBORNE: Mr. Chairman, I was trying  
13 to get at all the documents in the chain. I didn't get  
14 at that one yet, maybe later in the hearing I will  
15 produce it.

16 I just want to say on the record that I  
17 am aware there is another one inbetween. It is -- for  
18 purposes of some storage facilities, it has almost  
19 become a historical document, a rare one even though it  
20 is dated 1980.

21 Q. Now, I have only a very few  
22 questions, sir, about Exhibit 40, that's the Background  
23 Information and Approach to Policy.

24 Would you please turn to page 95 and read  
25 what appears under the heading Plans of the Ministry of

1 Natural Resources.

2 Do you have that page, sir?

3 MR. MONZON: A. Yes, I do. Do you want  
4 me to read it?

5 Q. Just read it to yourself, just  
6 refresh your memory as to what it says.

7 A. Oh, okay.

8 Q. And just let me know when you have  
9 finished reading it.

10 A. Yes.

11 Q. Okay. This is 1974, so the District  
12 Land Use Plan development program and so on isn't even  
13 underway yet; is that right?

14 A. That's correct.

15 Q. And at this point in time there are  
16 only -- there are some plans and they are listed here;  
17 is that right?

18 A. Yes. I don't think it is an  
19 exhaustive list, but it is reasonably complete.

20 Q. And it describes these as being plans  
21 at the sub-regional level of detail, the second  
22 sentence?

23 A. Yes.

24 Q. And that these plans should be  
25 considered as means of implementing the Strategic Land

1 Use Plan rather than determining it. What does that  
2 mean?

3 A. It means that they would -- in terms  
4 of the hierarchy of planning, the plans, such as the  
5 Quitico Park Plan and, for example, the East Lake  
6 Nipigon Plan would be at a level below the Strategic  
7 Land Use Plan.

8 Q. And the Strategic Land Use Plan is  
9 something that is in the process of development and  
10 part of that process is this document; is that right?

11 A. That's correct.

12 Q. I am not clear on, let's say, the  
13 Quitico Plan, I think you mentioned that.

14 It was in place in 1974, but the  
15 Strategic Land Use Plan had not yet been developed.  
16 How does a sub-regional plan like the Quitico Plan  
17 implement the Strategic Land Use Plan when the  
18 Strategic Land Use Plan doesn't exist?

19 I am just trying to get at -- were you  
20 telling your people -- was the Ministry telling its  
21 people at this time that the Strategic Land Use Plan  
22 had to conform with these existing plans or that these  
23 existing plans, if they didn't conform with the  
24 Strategic Land Use Plan once it was produced, would  
25 have to be changed?

1 A. The latter.

2 Q. The latter, okay. Could you turn to  
3 page 100, please. There is a heading there, Public  
4 Participation in Planning. One sentence under that, I  
5 will read it to you:

6 "There appears to be a concern that  
7 current planning accomodates the better  
8 organized and more vocal interest groups  
9 and overlooks the desires of individuals  
10 in the public generally."

11 Do you agree that that is still a  
12 concern, or has that gone by the board since 1974?

13 A. Well, my sense would be that that is  
14 still a concern that people involved in planning are  
15 going to have to deal with.

16 Q. Those are my questions concerning  
17 those exhibits.

18 Now, sir, a few questions about plans on  
19 the sub-regional level. Exhibit 23 was the Lake of the  
20 Woods General Land Use Plan; is that correct?

21 A. That's correct.

22 Q. Now, I may be wrong, but let me try  
23 to put this in perspective. This is dated November,  
24 1977?

25 A. Yes.

1 Q. That is before you had District Land  
2 Use Guidelines?

3 A. That's correct.

4 Q. So this was an area plan that was  
5 produced on a, more or less, ad hoc basis or at least  
6 in the sense that there wasn't a province-wide program  
7 underway at that time to produce plans of this type  
8 that would cover the entire area principally dealt with  
9 by the Ministry?

10 A. That is basically correct. I think  
11 we have described, as part of the discussion the other  
12 day, why we developed the Lake of the Woods -- why the  
13 Lake of the Woods Plan was developed.

14 Q. My next question is directed to Mr.  
15 Douglas.

16 Mr. Douglas, I think you said at least  
17 twice in your testimony that your planning power does  
18 not extend to Indian reserve lands; is that right?

19 MR. DOUGLAS: A. That's right.

20 Q. Can you explain to me why in 1977  
21 this General Land Use Plan at several points says  
22 expressly that it is intended to plan or determine what  
23 would be done on certain Indian reserves?

24 I can give you -- I am not trying to make  
25 you search through the document.



1                   A. I am not familiar with that document  
2 and I would have to read it and...

3                   Q. Okay. Well, let me ask Mr. Monzon.  
4                   You were working in the northwest, I  
5 cannot remember whether in 1977 you were, or you were  
6 in planning. Do you know anything about this Lake of  
7 the Woods General Land Use Plan in terms of its  
8 development?

9                   MR. MONZON: A. I know a little bit  
10 about it.

11                  Q. Okay. It was signed by two  
12 ministries, right?

13                  A. Yes, that's correct.

14                  Q. One of them being yours?

15                  A. That's correct.

16                  Q. Do you agree with me that at several  
17 places here it expressly says that the plan goals  
18 stated in the document included land use on Indian  
19 reserves?

20                  You don't have to search, sir, you can  
21 look, for instance, at page 125 or 123 or 121, it just  
22 says it again and again. It describes areas as  
23 including Indian reserves and portions of Indian  
24 reserves.

25                  A. Well, the -- what they are talking

1 about here on page - and I am on page 125 - is the area  
2 description No. 17. That area includes the one, two,  
3 three, the four Indian reserves that are mentioned in  
4 the extention, but also includes a substantial portion  
5 of Crown land outside of those Indian reserves.

6 Q. Yes, I agree.

7 A. So the intention then would not be  
8 to -- if you want direct development or resource  
9 management activity on those specific reserves, it  
10 would be -- the additional development and the  
11 development guidelines would relate to the Crown land.

12 Q. Well, is that your interpretation  
13 here in 1988 or is that what you know was intended back  
14 in 1977?

15 A. That would be my interpretation in  
16 1988. I would have to take some time to look through  
17 the document to see if there is, if you want, a  
18 qualifier that speaks to the Ministry's non-involvement  
19 relative to directing development on Indian reserve  
20 land.

21 Q. Could I suggest to you that the  
22 question was simply not addressed and that whoever  
23 wrote the document simply assumed that Ontario planned  
24 land use on Indian reserves?

25 A. I would think we would have a

1 disagreement on that point.

2 Q. Okay.

3 A. Because certainly the interpretation  
4 that we have always gone on in the Ministry is that  
5 Indian reserves are, in essence, private land.

6 Q. So you think that --

7 THE CHAIRMAN: Not private, under federal  
8 jurisdiction?

9 MR. MONZON: Under federal jurisdiction,  
10 yes. I am sorry, for purposes of planning would not be  
11 within the jurisdiction of the Ministry.

12 MR. COLBORNE: Q. All right. May I  
13 suggest to you that many, or at least a few of your  
14 Ministry's employees at the local level never - and  
15 perhaps still don't - understand that with respect to  
16 this plan because they look at it, they say it applies  
17 to Indian reserves and they walk on to Indian reserves  
18 with this plan in their briefcase saying: This is what  
19 we are going to do.

20 Not recently, mind you, but in the period  
21 shortly after it was published.

22 MR. MONZON: A. I would have no  
23 knowledge of that, Mr. Colborne.

24 Q. Could it be that your Ministry just  
25 got educated since 1977 on this topic, or at least that

1 portion of the Ministry that produced this plan?

2 A. I don't know if there is any -- I  
3 mean, we are getting out of an area -- we are getting  
4 into an area where I am going to have a little  
5 difficulty with because I wasn't there.

6 But certainly, when I was -- when this  
7 was done in 1977, I was in Thunder Bay and it was  
8 pretty clear to us that we did not have authority on  
9 the Indian reserve lands.

10 MR. FREIDIN: Is that something that Mr.  
11 Colborne will be calling evidence about?

12 MR. COLBORNE: I may.

13 MR. FREIDIN: All right.

14 THE CHAIRMAN: Well, whether he does or  
15 not, Mr. Freidin, he has gotten the answer from this  
16 witness that he doesn't really know about it from his  
17 own experience.

18 MR. FREIDIN: I am just concerned that,  
19 you know, the suggestion that certain things happened -  
20 and these are only isolated incidents - you know, these  
21 sorts of suggestions are made.

22 My understanding of the Rule of Evidence  
23 is that the party making the allegation or suggestions  
24 has to -- it is incumbent upon it to call evidence to  
25 substantiate the accuracy of the suggestion put to the

1 witness, notwithstanding the witness does not know the  
2 answer.

3 MR. COLBORNE: To the contrary, I think  
4 Mr. Freidin is quite wrong.

5 THE CHAIRMAN: If you are going to the  
6 question of whether counsel is giving evidence as  
7 opposed to substantiating it by calling evidence, that  
8 is one question.

9 But I am not sure, Mr. Freidin, in these  
10 proceedings, that every time counsel suggests something  
11 in cross-examination they have to call a witness to  
12 substantiate it later on.

13 MR. COLBORNE: Mr. Chairman, my  
14 understanding of my duty is that if I am alleging an  
15 impropriety, it would be quite improper for me as  
16 counsel to do that without the ability to call  
17 evidence. But if I'm simply alleging ignorance, I can  
18 do that, I can do that by suggesting it, and if I don't  
19 get the answers that I want that is my tough luck,  
20 but I don't have to --

21 THE CHAIRMAN: And if you want to be able  
22 to, later on, you can call your own witness to  
23 substantiate it.

24 MR. COLBORNE: That's right. I hope that  
25 I wasn't giving the impression that I was alleging



1       impropriety, I wasn't.

2               THE CHAIRMAN: Do you want to pursue this  
3 any further, Mr. Freidin?

4               MR. FREIDIN: Not at this time. It is  
5 just my understanding that the rule is not limited to  
6 suggestions of impropriety.

7               I'll just leave it for now. If it will  
8 become improvident, we will deal with it.

9               THE CHAIRMAN: Very well.

10              MR. MONZON: Mr. Colborne, if I might, on  
11 page 87 of the document at the bottom of that page,  
12 there is a paragraph which indicates that:

13              "While Indian reserve lands are not under  
14 provincial control, the needs and  
15 potentials of the reserves have been  
16 considered in the development of the  
17 plan. In addition, any future  
18 development that occurs on Indian reserve  
19 lands would be considered as contributing  
20 to achieving the proposed degree of  
21 development of the area it is within...."

22       And then it goes on to say:

23              "Therefore, it is hoped that future  
24 development on Indian reserves in the  
25 planning area will be compatible with the

1                   intents established for the area  
2                   contained in the reserve and neighbouring  
3                   areas."

4                   MR. COLBORNE: Q. Thank you, Mr. Monzon,  
5 I missed that and I thank you for finding it so  
6 quickly. I am surprised that you were able to, you  
7 certainly have facility with these documents. I didn't  
8 know that was there, I am sorry.

9                   That does explain why, in the appendices,  
10 it defines numerous of these areas as including Indian  
11 reserves.

12                  THE CHAIRMAN: Excuse me, could I just  
13 have that reference to those?

14                  MR. MONZON: I am sorry, Mr. Chairman, I  
15 have lost it again.

16                  MR. COLBORNE: Page 87, the last  
17 paragraph--

18                  MR. MONZON: The last paragraph.

19                  MR. COLBORNE: --of Exhibit 23.

20                  THE CHAIRMAN: Thank you.

21                  MR. COLBORNE: Q. Now, Mr. Monzon, I  
22 have quite a number of documents here which have to do  
23 with the planning process in northwestern Ontario, and  
24 I may need them in relation to evidence to be given by  
25 other panels.

1                   So I have a couple of questions about  
2                   them, but first I would like to go through a hopefully  
3                   very brief identification of those documents, and I  
4                   have placed a stack in front of you.

5                   I have placed the same stack - and I hope  
6                   it is in the same order - before all members of the  
7                   panel and all the counsel, except that I didn't have a  
8                   set, so Mr. Williams sitting furthest from me doesn't  
9                   have the set, I am afraid I have to apologize to him.

10                  MR. WILLIAMS: Will I need it?

11                  THE CHAIRMAN: Are you going to allege  
12                  prejudice, Mr. Williams?

13                  MR. WILLIAMS: Not at all.

14                  MR. COLBORNE: Q. Now, Mr. Monzon, you  
15                  have been involved with land use planning in  
16                  northwestern Ontario, so I assume you can just say yes  
17                  to my description of these documents, unless I am off  
18                  base. So shall we just proceed?

19                  MR. MONZON: A. Okay.

20                  THE CHAIRMAN: Do you want to mark them  
21                  at this time?

22                  MR. COLBORNE: I am asking you, Mr.  
23                  Chairman, if you could just tell me what the numbers  
24                  would be as I tell you what they are, and if counsel or  
25                  any member of the panel doesn't have what I am

1 referring to, or the pile is out of order, I will stop.

2 THE CHAIRMAN: Very well.

3 MR. COLBORNE: Q. The first one, Kenora  
4 District Land Use Plan, dated June, 1982. Is that a  
5 document that was produced in the process leading up to  
6 the Kenora District Land Use Guidelines?

7 MR. MONZON: That's correct.

8 MR. COLBORNE: And when I say the Kenora  
9 District Land Use Guidelines, I am referring to Exhibit  
10 22.

11 THE CHAIRMAN: That would be Exhibit 42.

12 MR. COLBORNE: Thank you.

13 ---EXHIBIT NO. 42: Proposed Policy and Optional Plans  
14 for the Kenora District Land Use  
Plan, dated June 1982

15 MR. COLBORNE: Q. Next in the pile will  
16 be the document titled Kenora District Land Use Plan  
17 Background Information, March 1981.

18 Is that another document that was  
19 produced leading up to the Kenora District Land Use  
20 Guidelines?

21 MR. MONZON: A. Yes.

22 THE CHAIRMAN: Exhibit 43.

23 MR. FREIDIN: Excuse me, Mr. Chairman, is  
24 Exhibit 42 a description of Kenora District Land Use  
25 Plans?

1 THE CHAIRMAN: Dated June '82.

2 MR. FREIDIN: Oh, I am sorry. Thank you.

3 THE CHAIRMAN: And the next one is Kenora  
4 District Land Use Plan, dated March, 1981 -- background  
5 information, sorry.

6 MR. FREIDIN: I am just wondering, just  
7 so that it would be clear, if we look at the list of  
8 exhibits, Exhibit 42 is the Proposed Policy and  
9 Optional Plans for the District Land Use Plan, so  
10 perhaps that could be added to the description.

11 THE CHAIRMAN: All right. I guess that  
12 would be appropriate.

13 MR. COLBORNE: That's fine.

14 THE CHAIRMAN: And the next one will be  
15 headed with Background Information for the Kenora  
16 District Land Use Plan dated March, 1981.

17 ---EXHIBIT NO. 43: Background Information for the  
18 Kenora District Land Use Plan  
19 dated March, 1981.

20 MR. COLBORNE: Q. Mr. Monzon, the next  
21 one in the pile should be Dryden District Land Use  
22 Guidelines dated 1983?

23 MR. MONZON: A. Yes.

24 MR. COLBORNE: Would this be No. 44, Mr.  
25 Chairman?



1 THE CHAIRMAN: Exhibit 44.

2 ---EXHIBIT NO. 44: Dryden District Land Use  
3 Guidelines dated 1983.

4 MR. COLBORNE: Q. The next one should be  
5 Dryden District Land Use Plan, Proposed Policy and  
6 Optional Plans dated June, 1982.

7 MR. MONZON: A. That's correct.

8 THE CHAIRMAN: Exhibit 45.

9 ---EXHIBIT NO. 45: Dryden District Land Use Plan,  
10 Proposed Policy and Optional Plans  
dated June, 1982.

11 MR. COLBORNE: Q. The next one is  
12 Background Information, Dryden District Land Use Plan,  
13 dated April, 1980?

14 MR. MONZON: A. Yes.

15 THE CHAIRMAN: Exhibit 46.

16 ---EXHIBIT NO. 46: Background Information, Dryden  
17 District Land Use Plan dated April,  
1980.

18 MR. COLBORNE: Q. The next one, Fort  
19 Frances District Land Use Guidelines dated, 1983?

20 MR. MONZON: A. Yes.

21 THE CHAIRMAN: Exhibit 47.

22  
23 ---EXHIBIT NO. 47: Fort Frances District Land Use  
24 Guidelines dated 1983.

25 MR. COLBORNE: Q. The next, Fort Frances

1 District Land Use Plan, Proposed Policy and Optional  
2 Plans, June, 1982?

3 MR. MONZON: A. Yes.

4 THE CHAIRMAN: That will be Exhibit 48.

5 ---EXHIBIT NO. 48: Fort Frances District Land Use  
6 Plan, Proposed Policy and Optional  
Plans, June, 1982.

7 MR. COLBORNE: Q. And finally,  
8 Background Information, Fort Frances District Land Use  
9 Plan dated April, 1980?

10 MR. MONZON: A. Yes.

11 THE CHAIRMAN: That will be Exhibit 49.

12 ---EXHIBIT NO. 49: Background Information, Fort  
13 Frances District Land Use Plan  
dated April, 1980.

14 THE CHAIRMAN: I think we are all messed  
15 up. I have got one extra one here.

16 MR. COLBORNE: Is that a Dryden one?

17 THE CHAIRMAN: No, this is Fort Frances  
18 Land Use Guidelines. What happened to that one?

19 ---Discussion off the record

20 MR. MARTEL: 47 is Fort Frances District  
21 Land Use--

22 THE CHAIRMAN: Okay, hold on a second.  
23 Just a minute.

24 MR. MARTEL: --Background Information;  
25 isn't it, and 48 is this one. (indicating)

1 THE CHAIRMAN: We are hopeless, Mr.  
2 Colborne.

3 MR. COLBORNE: That is what I was afraid  
4 of. I have a few extra. Could I just go back to No.  
5 47 and read what I have.

6 MRS. KOVEN: We will start again.

7 MR. COLBORNE: Starting with 47?

8 MR. MARTEL: If my hand would only write.

9 THE CHAIRMAN: Why don't we go back to  
10 43?

11 MR. COLBORNE: Right.

12 THE CHAIRMAN: And that is the March,  
13 1981 Background Information Kenora District Land Use  
14 Plan.

15 MR. COLBORNE: Yes.

16 THE CHAIRMAN: Okay?

17 MR. COLBORNE: Yes.

18 THE CHAIRMAN: And then we go to Exhibit  
19 44 which is the Dryden District Land Use Guidelines,  
20 1983--

21 MR. COLBORNE: Yes.

22 THE CHAIRMAN: --is that right?  
23 Exhibit 45 is the Dryden District Land  
24 Use Plan, June, '82.

25 MR. COLBORNE: Yes.

1 THE CHAIRMAN: Exhibit 46...?

2 MR. MARTEL: Dryden District Land Use  
3 Plan, Proposed Policy and Option Plan; is that 45?

4 THE CHAIRMAN: Yes, I am sorry, that is  
5 right.

6 MR. COLBORNE: Yes.

7 THE CHAIRMAN: Okay. Where I got it  
8 mixed up, the Background Information, Dryden District  
9 Land Use Plan is Exhibit 46; is that right?

10 MR. COLBORNE: Yes.

11 THE CHAIRMAN: And then the Fort Frances  
12 District Land Use Guidelines, 1983 is Exhibit 47, and  
13 then the Fort Frances Land Use Plan, Proposed Policy  
14 and Optional Plans June of '82 is Exhibit 48.

15 And then the Background Information, Fort  
16 Frances District Land Use Plan April, '80 is Exhibit  
17 49.

18 MR. COLBORNE: That is what I have.

19 THE CHAIRMAN: So entered.

20 MR. COLBORNE: Thank you.

21 Now, Mr. Chairman, we won't have to do it  
22 again, not with these anyway.

23 Q. Mr. Monzon, the District Land Use  
24 Guidelines for Kenora, Exhibit 22; for Dryden, Exhibit  
25 45 -- just a second, for Dryden, Exhibit 44; and for

1 Fort Frances, Exhibit 47, all contain under the heading  
2 Public Interest, the same paragraph I suggest, and you  
3 can certainly check and tell me and the Board if I am  
4 wrong. I am not asking you to leaf through them and  
5 confirm this.

6 Let's look at page 9 of the Fort Frances  
7 one, and there I see the heading Public Interest, and I  
8 will just read this to you.

9 If you can't find it immediately, I think  
10 you are probably familiar with the passage, sir, and it  
11 is not essential. I don't think, for purposes of my  
12 question, that you have to have it before you.

13 "The Crown Ontario owned resources of the  
14 province belong to all the people of  
15 Ontario and will be administered in the  
16 best interests of the provincial  
17 population as a whole, including the  
18 special interests of the residents of the  
19 areas where the resources are located.  
20 Traditional native rights both within  
21 provincial parks and on Crown land will  
22 continue to be respected."

23 Now, that paragraph, I suggest, appears  
24 under the same heading in the same part of each of  
25 those guidelines. Does that sound correct to you?



1 MR. MONZON: A. Yes, that sounds  
2 correct.

3 Q. And just further on in each of the  
4 guidelines for each of these three districts, and in  
5 the case of Fort Frances, there appears the following  
6 sentence, it is under a sub-heading Crown Land and,  
7 again, if you have the Exhibit 47 before you I can tell  
8 you that it is at page 10.

9 If you don't have it before you, it  
10 doesn't matter too much. It is one sentence, I will  
11 read it:

12 "The government's position on land  
13 claims such as those by any native people  
14 will be clarified."

15 Do you agree, subject to whatever  
16 checking you may want to do, that that same sentence  
17 appears in approximately the same position in all three  
18 of these District Land Use Guidelines?

19 MR. MONZON: A. Yes.

20 Q. Now, I asked you this morning and you  
21 confirmed for me that in each of the District Land Use  
22 Guidelines one can find a reference, and in a  
23 statistical form of some kind, to the number of public  
24 submissions considered in development of those district  
25 guidelines?

1 A. Yes, I believe that's correct.

2 Q. Now, I have the Fort Frances one  
3 before me and I am going to refer to it and the Dryden  
4 and the Kenora ones.

5 I am not asking you to keep up with me,  
6 if I'm wrong I am sure somebody can check the record.

7 I am going to turn, in the Fort Frances  
8 District Land Use Guidelines, Exhibit 47, to page 96  
9 where I find a table entitled Table A-5, Submissions by  
10 Origin and Representative Category.

11 Under one of the categories is native  
12 organizations and the number of submissions is zero.

13 Do you have any reason to think that I am  
14 misreading that data?

15 A. No, no.

16 Q. Now, I would like to go to the Dryden  
17 District Land Use Guidelines, Exhibit 44, and again if  
18 you cannot put your hand on it, I don't think it is  
19 terribly essential, I will tell you where I am looking.

20 I am looking at page 81, and on that page  
21 I find table A-3 entitled Input-Received by Type and  
22 Representative Category. One of the categories is  
23 native representation and the total is one.

24 A. Yes.

25 Q. Any reason to think that is

1 incorrect?

2 A. No.

3 Q. And that is one of 395?

4 There is a total on this particular table, I believe.

5 Now, the Kenora District Land Use  
6 Guidelines, Exhibit No. 22, I am turning to page 85,  
7 and here I find table A-4 entitled Input Received by  
8 Representative Category and Origin Phase 2.

9 One of the categories is native groups  
10 and the number of inputs is -- totals two; is that  
11 right?

12 A. That's correct.

13 Q. Under that category, 2 of a grand  
14 total of 425.

15 A. That's correct.

16 MRS. KOVEN: Mr. Colborne, I noticed in  
17 Exhibit 44 that the one input was a workshop. You  
18 might say if it is written, or workshop, simply a note  
19 behind it.

20 MR. COLBORNE: Yes, I noticed that as  
21 well.

22 MRS. KOVEN: That would mean one person  
23 showed up at the workshop?

24 MR. COLBORNE: That is a good question.  
25 I don't know.

1 Q. Mr. Monzon, do you have any knowledge  
2 of whether the workshop referred to at page 81 of  
3 Exhibit 44 means that there was a workshop involving a  
4 large number of native people and whether one person of  
5 native origin showed up at the workshop?

6 MR. MONZON: A. My understanding would  
7 be that it would have been one workshop with native  
8 people, but in terms of the number of people that were  
9 there, at this point I could not tell you that.

10 Q. Now, the fact that all of these Land  
11 Use Guidelines in the areas most central to my clients'  
12 concern; that is, the Dryden, Fort Frances, Kenora  
13 areas, contain exactly the same work formula concerning  
14 the general topic of native rights and land claims,  
15 reflects, I take it from your earlier testimony, that  
16 the district people didn't write that, that is a  
17 statement of broader policy which, for one reason or  
18 another, was thought at that time to be properly  
19 included in all District Land Use Guidelines, or at  
20 least all of the ones that we looked at here; is that  
21 right?

22 A. Yes, that's generally correct. We  
23 wanted to make sure that there was a consistent message  
24 there.

25 Q. Now, as to the data that appeared in

1 these District Land Use Guidelines concerning input  
2 from native organizations, do you not agree that that  
3 data is quite outstanding in showing how little native  
4 organizations did participate in this planning process?

5 A. Yes, I would agree with that. I  
6 think we have indicated earlier that that is an area we  
7 all want to do better on.

8 I think the issue of the numbers that did  
9 participate is to be -- is an indication of that. It  
10 is the numbers of those that had participated.

11 In terms of the efforts of the Ministry  
12 to get additional participation, that will be another  
13 issue.

14 MR. COLBORNE: Those are my questions.  
15 Thank you Mr. Douglas. Thank you, Mr.  
16 Monzon.

17 Thank you, Mr. Chairman.

18 THE CHAIRMAN: Have you completed your  
19 examination?

20 MR. COLBORNE: I have.

21 THE CHAIRMAN: Well, thank you very much.  
22 A little gift at the end of the day.

23 As counsel pointed out at the break, we  
24 are always reluctant to allow counsel to go away  
25 overnight to continue the next day with the fear that



1 some further questions might pop into their minds at  
2 night and would come back tomorrow with a much  
3 lengthier presentation.

4 But I hope, in no way, have you been  
5 constrained in your examination in terms of timing,  
6 because we are quite prepared to continue on tomorrow  
7 if you have further questions.

8 MR. COLBORNE: No, I can say quite  
9 confident on the record I have not felt constrained.

10 I am now complete, even though it happens  
11 to be exactly the time you indicated that you wanted  
12 to...

13 THE CHAIRMAN: Very good.

14 Ladies and gentlemen, we will adjourn for  
15 the night and return tomorrow morning again at 9:30.

16 If I recall the order correctly, we would  
17 be starting off tomorrow with any cross-examination  
18 from any member of the public that may wish to  
19 cross-examine, but I do not know whether there are many  
20 members of the public here, today at least, who would  
21 wish to pose any questions tomorrow.

22 We would then follow with the Ministry of  
23 the Environment.

24 Can you give us an indication, Ms.  
25 Seaborn, how long the Ministry might be?

1 MS. SEABORN: I think I will probably be  
2 an hour and a half at the most.

3 THE CHAIRMAN: Very good.

4 Can you give us any indication in  
5 re-examination how long you might be, Mr. Freidin?

6 MR. FREIDIN: About the same, an hour to  
7 an hour and a half.

8 THE CHAIRMAN: So that will take us  
9 hopefully not beyond lunch time.

10 What are the plans for the afternoon, the  
11 next panel?

12 MR. FREIDIN: We can start with Panel 2,  
13 if it is not too late in the day.

14 THE CHAIRMAN: Very good.

15 MR. COLBORNE: Mr. Chairman, I should  
16 perhaps remind you, and all of us, that Mr. Douglas  
17 prepared something which was in response to one of my  
18 questions, and I asked him if he would be kind enough  
19 to save it until tomorrow so we could get done by 5:00  
20 today, but he, I think, is expecting to be able to  
21 clarify that question.

22 THE CHAIRMAN: Could we deal with that  
23 first thing in the morning before we go into your  
24 examination?

25 MS. SEABORN: If it is of any assistance

1 to the Board, Mr. Chairman, I propose to put on the  
2 screen for you tomorrow an overhead that is a chart  
3 that flows from one of our interrogatories and it is  
4 something along the lines of what Mr. Douglas seems to  
5 have on his sheet of paper.

6 Now, I am quite prepared that Mr. Douglas  
7 go ahead and I will just continue on in due course.

8 THE CHAIRMAN: Why don't we do it in that  
9 fashion?

10 He has taken the time and effort to put  
11 together an autographed drawing, so we will let him  
12 continue first thing in the morning, and then we can  
13 continue on with your examination at that point.

14 One other matter, just to complete things,  
15 and that is: Mr. Castrilli, you indicated last week  
16 that you were going to take instructions on the matter  
17 that we argued last Wednesday, and we indicated that  
18 the Board would allow you to get those instructions and  
19 perhaps address those issues at a future date.

20 I believe there was also Mr. Edwards that  
21 was in that position, although he is not here right  
22 now, and I forgot to ask him that yesterday.

23 Have you received instructions, or are  
24 you going to be making further representations?

25 MR. CASTRILLI: Yes, Mr. Chairman. My

1 representations will be extremely brief, unlike my  
2 cross-examination, and I would anticipate being  
3 permitted to do that before we rise on Friday  
4 afternoon.

5 THE CHAIRMAN: Very good.

6 If any counsel happens to run into Mr.  
7 Edwards over the next couple of days, perhaps we could  
8 deal with him on those issues at the same time and get  
9 that whole matter out of the road.

10 Thank you very much. We will adjourn  
11 until 9:30 a.m.

12 ---Whereupon the hearing adjourned at 5:00 p.m. to  
13 reconvene Monday, June 6th, 1988, commencing at 1:00  
14 p.m.













